



COMMENTARIES ON

U. P. Nagar Mahapalika Adhiniyam, 1959

(U. P. Act No. II of 1959)

ALONG WITH

Rules, Orders and Notifications etc.

By

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THANKS TO THE READERS

One who wears a shoe knows well where the shoe pinches so I have been the victim of so many problems in the cases I conducted under the Nagar Mahapalika Adhiniyam for the last several years. The Book has been specially written from the point of view of and by an Advocate dealing in the Nagar Mahapalika cases and not by such an author who only decides cases, or only reads case laws. Still the author would be obliged if the practising lawyers send their suggestions and inform him the short comings in this respect so that the same may be included in the next edition of this commentary.

Kr. Dharm Pal Nigam,
Advocate

Kanpur

Date 10-1-1972.



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U. P. Nagar Mahapalika Adhiniyam

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Comparative Chart

List of analogous provisions in this Adhiniyam

| Sections of Nagar Mahapalika Adhiniyam | Analogous Section of Municipali ties Act |
|---|---|
| 2 (6) | 2 (2) |
| 2 (55) | 2 (17) |
| 2 (86) | 2 (25) |
| 16 | 87-A |
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| 78 | 28 |
| 83 | 40 |
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| 85 | 43-D |
| 89 | 86 |
| 104 | 113 |
| 107 ¹ | 57 |
| 108 ¹ | 59 |
| 110 ¹ | 58-69-A |
| 112 ¹ | 60, 60-A |
| 114 | 7 |
| 115 | 8 |
| 126 | 116 |
| 132 | 96 |
| 133 | 97 |
| 172 (1) (a) | 128 (1) (i)-(1) (x)-(1) (x-A) (1) (xii) |
| (1) (b) | (1) (iv) |
| (1) (c) | (1) (vi) |
| (2) (a) | (1) (ii) |
| (2) (b) | (1) (viii) |
| (2) (c) | (1) (xiii) |
| (2) (d) | (1) (vii) |
| (2) (e) | (1) (v) |
| (2) (g) | (1) (xiii-b) |
| (2) (i) | (1) (iii-a) |
| (2) (j) | (1) (xiv) |
| 174 | 140 |
| 175 | 129 |
| 178 | 151 |
| 179 | 149 |
| 180 | 150 |
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|----------------------------|--------------------|
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| 357 | 36 ² |
| 363 | 42 ² |
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| 551 | 304 |
| 554 | 315 ¹ |
| 571 | 326 |
| 571-A | 330 |
| 572 | 326-A |
| 573 | 313 |
| 577 | 333-A |

1. Some what similar provisions in purport only.
2. This section relates to U. P. Town Improvement Act, 1919.

U. P.

Nagar Mahapalika Adhiniyam, 1959

(U. P. Act II of 1959 as amended by U. P. Act No. XIV of 1959,
U. P. Act XXII of 1961, U. P. Act. XXIII of 1961, U. P.
Act XVII of 1963, U. P. Act XXI of 1964, U. P.
XXIX of 1966, U. P. Act 8 of 1970 and
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SCHEDULE I

SCHEDULE II

SCHEDULE III

An Act to provide for the establishment of Nagar Mahapalikas for certain cities in Uttar Pradesh

Whereas it is expedient to provide for the establishment of Nagar Mahapalikas in certain cities with a view to ensure better municipal government of the said cities ; it is hereby enacted as follows :

CHAPTER I

Preliminary

1. **Short title, extent and commencement.**—(1) This Act may be called the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959.

(2) It extends to the whole of the State of Uttar Pradesh.

(3) This Chapter shall come into operation at once, and the remaining provisions of this Act shall in relation to a City come into operation from such day as the State Government may by notification in the official *Gazette* appoint in that behalf [and different dates may be appointed for different provisions]¹ :

Provided that for the limited purpose of constituting a Mahapalika for a City under this Act, the provisions of Chapter II including—

(a) the delimitation of words in the City ;

(b) the preparation and publication of electoral rolls ;

1. *Ins.* by U. P. Act No. XIV of 1959.

- (c) the qualifications and disqualifications for being chosen as Nagar Pramukh, Vishishta Sadasya or Sabhasad of a Mahapalika ; and for nomination as candidate for election as Nagar Pramukh, Vishishta Sadasya or Sabhasad ; and
- (d) generally, the conduct of election and all other matters necessary for the due constitution of the Mahapalika ;

shall come into operation in and in respect of such City from the date of notification under Section 3 and notwithstanding anything in any other enactments all acts may be done and all proceedings taken as may be necessary for holding the elections in accordance with the provisions of the said Chapter and rules made thereunder for the due constitution of the Mahapalika.

**UTTAR PRADESH NAGAR MAHAPALIKAS (ALPAKALIK
VYAVASTHA) ADHINIYAM, 1966**

[U. P. Act No. IV of 1966]

[As passed by the Uttar Pradesh Legislature]

An Act to provide for certain temporary arrangements for the administration of the Nagar Mahapalikas of the State on and from the first day of February, 1966 and for matters connected therewith

It is hereby enacted in the Seventeenth year of the Republic of India as follows :—

1. Short title.—This Act may be called the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966.

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Nagar Mahapalika (Alpakalika Vyavastha) Adhiniyam, 1966 (Uttar Pradesh Adhiniyam Sankhya IV of 1966) as passed by the Uttar Pradesh Legislature and assented to by the Governor on February 28, 1966.

Published in U. P. Gazette Extra, dated March 1, 1966.

Temporary provisions regarding administration of Mahapalikas.—Upon the expiry of the extended term of the Mahapalikas of Kanpur, Agra, Varanasi, Allahabad and Lucknow on the thirty-first day of January, 1966, the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the said Adhiniyam), shall on and from the first day of February, 1966, for a period of [four years and eleven months]¹ or until the reconstitution of the said Mahapalikas under Section 9 of the said Adhiniyam, whichever be earlier, have effect in relation to each of the said Mahapalikas subject to the following provisions, namely—

- (a) notwithstanding anything in the said Adhiniyam, the Nagar Pramukh, the Up Nagar Pramukh, the Sabhasads, the Vishishta Sadasyas and the Mukhya Nagar Adhikari of the Mahapalika shall vacate their respective offices ;

1. Subs. by U. P. Act No. XII of 1968, U. P. Act No. V of 1969 and the words "four years eleven montns" have been subs. by Act No. VIII of 1970.

- (b) all powers, functions and duties of the Mahapalika, its Nagar Pramukh, Up Nagar Pramukh, Executive Committee, Development Committee and other Committees and of the Mukhya Nagar Adhikari, shall be vested in and be exercised, performed and discharge by an Administrator to be appointed by the State Government, and such Administrator shall be deemed in law to be the Mahapalika, Nagar Pramukh, Up Nagar Pramukh, Executive Committee, Development Committee or other Committee, or the Mukhya Nagar Adhikari, as the occasion may require ;
- (c) subject to any general or special orders of the State Government, the Administrator may in respect of all or any of the powers conferred on him by the last preceding clause,—
 - (i) delegate, subject to such conditions as he may think fit to impose, the powers so conferred, to any person or authority to be specified by him in that behalf ; or
 - (ii) consult such body or committee constituted in such manner as may be specified by him in that behalf ;
- (d) such salary and allowances of the Administrator as may be fixed by general or special orders of the State Government in that behalf shall be paid out of the Mahapalika Fund ;
- (e) the State Government may from time to time by notification in the *Gazette*, make such incidental and consequential provisions, including provisions for adapting, altering, modifying or suspending in whole or in part the operation of any provisions of the said Adhiniyam, as may appear to it to be necessary or desirable for any of the foregoing and connected purposes.

Repeal and Saving.—(1) The Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhyadesh, 1966 (U. P. Ordinance No. 11 of 1966), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the twentyfifth day of January, 1966.

2. Definitions.—In this Act unless there be something repugnant in the subject or context—

(1) “advertisement” means any word, letter, model, sign, placard, board, notice, device, or representation whether illuminated or not, in the nature of and employed wholly or in part for the purpose of advertisement, announcement or direction and include any hoarding or similar structures used or adapted to be used for the display of advertisement ;

(2) “appointed day” with reference to a City means the day on which the due constitution of the Mahapalika for the City is notified in the official *Gazette* ;

(3) “Assembly Rolls” mean the electoral rolls prepared for the Assembly constituencies under and in accordance with the provisions of the Representation of the People Act, 1950 ;

(4) "bakery or bake-house" means any place in which bread, biscuits or confectionery are baked, cooked or prepared in any manner whatsoever for the purposes of sale or profit ;

(5) "budget grant" means the total sum entered on the expenditure side of a budget estimate under a major head as prescribed by rules and adopted by the Mahapalika and includes any sum by which such budget grant may be increased or reduced by a transfer from or to other heads in accordance with the provisions of this Act and rules ;

(6) "building" includes a house, out-house, stable, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, door-steps, walls including compound walls and fencing and the like but does not include a tent or other such portable temporary structures ;

(7) "building line" means a line which is in rear of the street-alignment and to which the main wall of a building abutting on a street may lawfully extend and beyond which no portion of the building may extend except as prescribed in the building rules ;

(8) "bye-law" means a bye-law made under the provisions of this Act ;

(9) "cesspool" includes a settlement tank or other tank for the reception or disposal of foul matter from buildings ;

(10) "City" means any local area constituted to be a City under Section 3 ;

(11) "Commissioner of Division" with reference to a City means the Commissioner of the Division in which the City is situated and includes any Additional Commissioner to whom the Commissioner of the Division has delegated his functions under this Act ;

(12) "cubical contents" when used with reference to the measurement of a building means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest storey, or, when the building consists of one storey only, the upper surface of its floor ;

(13) "dairy" includes any farm, cattle-shed, milk store, milk-shop or other place from which milk is supplied for sale or in which milk is kept for the purposes of sale or manufactured into butter, *ghee*, cheese, curd or dried or condensed milk for sale and, in the case of a dairy-man who does not occupy any place for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk but does not include a shop or other place in which milk is sold for consumption on the premises only ;

(14) "dairyman" includes the keeper of a cow, buffalo, goat, ass or other animal, the milk of which is offered or intended to be offered for sale for human consumption and any purveyor of milk and any occupier of a dairy ;

(15) "dairy produce" includes milk, butter, *ghee*, curd, butter-milk, cheese and every product of milk ;

(16) "dangerous disease" means cholera, plague, small-pox, or any other epidemic or infectious disease by which the life of human beings is endangered and which the Mahapalika may from time to time by public notice declare to be a dangerous disease ;

(17) "Nirvachan Sanchalak (Sthaniya Nikaya) [Director of Elections (Local Bodies)]" means an officer appointed by the State Government in this behalf and includes any officer appointed by the State Government as Atriak Nirvachan Sanchalak (Additional Director of Elections) or Nirvachan Up-Sanchalak (Deputy Director of Elections) to whom the Nirvachan Sanchalak (Sthaniya Nikaya) may by writing have delegated any or all of his functions ;

(18) "District Judge" includes an Additional District Judge to whom any function of the District Judge has been transferred under this Act ;

(19) "drain" includes a sewer, tunnel, pipe, ditch, gutter or channel and cistern, flush-tank, septic-tank, or other devices for carrying off or treating sewage offensive matter, polluted water, sullage, waste water, drain water, or sub-soil water and any culvert, ventilation shaft or pipe or other appliance or fitting connected therewith, and any ejectors, compressed air mains, sealed sewage mains and special machinery or apparatus for raising, collecting, expelling or removing sewage offensive matter from any place ;

(20) "eating house" means any premises to which the public or any section of the public are admitted and where any kind of food is prepared or supplied for consumption on the premises or elsewhere for the profit or gain of any person owning or having an interest in or managing such premises ;

(21) "elector" in relation to a ward means a person whose name is for the time being entered in the electoral roll of that ward ;

1[(22) 'essential service' means a service referred to in Section 112-B].

(23) "factory" means a factory as defined in the Factories Act, 1948 ;

(24) "filth" includes sewage, night-soil and all offensive matter ;

(25) "financial year" means the year commencing on the first day of April ;

(26) "food" includes every article used for food or drink by man other than drugs or water, and any article which ordinarily enters into or is used in composition or preparation of human food, and also includes confectionery-flavouring and colouring matters and spices and condiments ;

(27) "frame building" means a building the external walls of which are constructed of timber framing or iron framing, and the stability of which depends on such framing ;

(28) "house-drain" means any drain of, and used for the drainage of, one or more buildings or premises and made merely for the purpose of communicating therefrom with a Mahapalika drain ;

(29) "house-gully" or "service passage" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cess-pool or other receptacle for filthy or polluted matter, to Mahapalika servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom ;

(30) "hut" means any building which is constructed principally of wood, mud, leaves, grass, cloth, or thatch and includes any temporary structure of whatever size or any small building of whatever material made which the Mahapalika may declare to be a hut for the purpose of this Act ;

(31) "inhabitant" used with reference to a local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein ;

(32) "the judge" means the judge of the Court of Small Causes having jurisdiction in the City under the Provincial Small Cause Court Act, 1887 ;

(33) "land" includes land which is being built upon or is built upon or is covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street ;

(34) "licensed plumber", "licensed surveyor", "licensed architect", "licensed engineer", "licensed structural designer" and "licensed clerk of work" respectively, mean a person licensed by the Mahapalika as a plumber, surveyor, architect, engineer, structural designer or a clerk of works under this Act :

(35) "lodging house" means a building or part of a building where lodging with or without board or other service is provided for a monetary consideration and includes a collection of buildings, or a building, or part of a building used for the accommodation of pilgrims and travellers whether on payment or otherwise ;

(36) "market" includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, live-stock or food for live-stock or meat, fish, fruit, vegetables, animals intended for human food or any other articles of human food whatsoever with or without the consent of the owner of such place, notwithstanding that there may be no common regulation of the concourse of buyers and sellers and whether or not any control is exercised over the business of or the persons frequenting the market by the owner of the place or any other person ;

(37) "masonry building" means any building other than a frame building or a hut and includes any structure a substantial part of which is made of masonry or of steel, iron or other metal ;

(38) "member of a Mahapalika" means a Vishishta Sadasya or a Sabhasad, and unless the contrary is indicated includes an Upa Nagar Pramukh and a Nagar Pramukh even where he is *ex-officio* member of the Mahapalika ;

(39) "Mukhya Nagar Adhikari" means the Mukhya Nagar Adhikari for the City appointed under Section 58 and includes an Upa Nagar Adhikari and a Sahayak Nagar Adhikari appointed under Section 107 ;

(40) "Mahapalika drain" means a drain vested in the Mahapalika ;

(41) "Mahapalika market" means a market vested in or managed by the Mahapalika ;

(42) "Mahapalika slaughter-house" means a slaughter-house vested in or managed by the Mahapalika ;

(43) "Mahapalika office" means office of the Nagar Mahapalika ;

(44) "Mahapalika tax" means any impost levied under the provisions of this Act ;

(45) "Mahapalika water-works" means waterworks belonging to or vesting in the Mahapalika ;

(46) "nuisance" includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property ;

(47) "occupier" includes—

(a) any person who for the time being is paying or is liable to pay the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable ;

(b) an owner living in or otherwise using his land or building ;

(c) a rent-free tenant ;

(d) a licensee in occupation of any land or building, and

(e) any person who is liable to pay to the owner damages for the use any occupation of any land or building ;

(48) "offensive matter" includes animal carcasses, dung, dirt and putrid or putrifying substances other than sewage ;

(49) "Officer of the Mahapalika" means a person holding for the time being an office created or continued by or under this Act but shall not include a member of the Mahapalika or of a Committee as such ;

(50) "Official Gazette" means the *Gazette* issued under the authority of the State Government ;

(51) "Order" means an order published in the official *Gazette* or in the manner prescribed ;

(52) "owner" means—

(a) when used with reference to any premises the person who receives the rent of the said premises or who would be entitled to receive the rent thereof if the premises were let and includes—

(i) an agent or trustee who receives such rent on account of the owner,

(ii) an agent or trustee who receives the rent of or is entrusted with, or concerned for any premises devoted to religious or charitable purposes,

(iii) a receiver, sequestrator or manager appointed by any Court of competent jurisdiction to have the charge of, or to exercise the rights of an owner of, the said premises, and

(vi) a mortgagee-in-possession ;

(b) when used with reference to any animal, vehicle or boat, includes the person for the time being in charge of the animal, vehicle or boat ;

(53) "part of a building" includes any wall, underground room or passage, verandah, fixed platform, plinth, staircase or door-step attached to, or within the compound of an existing building or constructed on ground which is to be the site or compound of a projected building ;

(54) "premises" includes messuages, buildings and lands of any tenure whether open or enclosed, whether built on or not and whether public or private ;

(55) "prescribed" means prescribed by this Act or by rule or order made thereunder or by or under any other enactment ;

(56) "prescribed authority" means an officer or a body corporate appointed by the State Government in this behalf by notification in the official *Gazette*, and, if no such officer or body corporate is appointed, the Commissioner of the Division in which the City is situate ;

(57) "petroleum" means petroleum as defined in the ¹[Petroleum Act, 1934] ;

(58) "private street" means a street which is not a public street ;

(59) "privy" means a place set apart for defecating or urinating or both, together with the structure comprising such place, the receptacle therein for human excreta and the fittings and apparatus, if any, connected therewith, and includes a closet of the dry type, an *aqua privy*, a latrine and a urinal ;

(60) "public place" includes any public park or garden or any ground to which the public have or are permitted to have access ;

(61) "public securities" means—

(a) securities, of the Central Government or any State Government ;

(b) securities, stocks, debentures or shares, the interest whereon has been guaranteed by the Central or the State Government ;

(c) debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by any enactment for the time being in force in any part of the Republic of India ;

(d) securities expressly authorized by any order which the State Government makes in this behalf ;

(62) "public street" means any street—

(a) heretofore levelled, paved, metalled, channelled, sewered or repaired out of Mahapalika or other public funds ; or

(b) which under the provisions of Section 290 is declared to be, or under any other provision of this Act becomes, a public street ;

(63) (a) a person is deemed to "reside" in any dwelling which, or some portion of which, he sometimes uses, whether interruptedly or not, as a sleeping apartment ; and

(b) a person is not deemed to cease to "reside" in any such dwelling merely because he is absent from it or has elsewhere another dwelling in which he resides, if there is the liberty of returning to it at any time and no abandonment of the intention of returning to it ;

(64) "rubbish" includes dust, ashes, broken bricks, mortar, broken glass, garden or stable refuse and refuse of any kind which is not offensive matter or sewage ;

(65) "rules" mean rules made under powers conferred by this Act ;

(66) "Schedule" means the schedule appended to this Act ;

1. *Subs.* by U. P. Act XIV of 1959 for Indian Petroleum Act, 1899.

(67) "Scheduled Castes" means the castes specified in the Constitution (Scheduled Castes) Order, 1950 ;

(68) The expression "Scheduled Bank" shall have the meaning assigned to it in the Reserve Bank of India Act, 1934 ;

(69) "Servant of the Mahapalika" means any person in the pay and service of the Mahapalika ;

(70) "sewage" means night-soil and other contents of water-closets, latrines, privies, urinals, cess-pools, drains and polluted water from sinks, bath-rooms, stables, cattle-sheds, and other like places and includes trade effluent and discharges from manufactories of all kinds ;

(71) "sky-sign" means any word, letter, model, sign, device or other representation, in the nature of an advertisement, announcement or direction, which is supported on or attached to any post, pole, standard, framework or other support wholly or in part upon, over or above any building or structure and which is wholly or in part visible against the sky from any point in any street or public place, and includes -

(a) every part of support, and

(b) any balloon, parachute or similar device employed wholly or in part of the purposes of any advertisement or announcement, on, over or above any building, structure or erection of any kind, or on or over any street or public place ;

but shall not be deemed to include—

(i) any flagstaff, pole, vane or weathercock unless adapted or used wholly or in part for the purposes of any advertisement or announcement ;

(ii) any sign on any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, on the cornice or blocking-course of any wall, or to the ridge of a roof, if such contrivance be of one continuous face and not open work and does not extend in height more than three feet above any part of such wall, parapet or ridge ; or

(iii) any representation which relates exclusively to the business of a railway administration as defined in the Indian Railways Act, 1890, and which is placed wholly upon or over any railway station yard, platform or station approach, or premises belonging to such railway administration, and which is also so placed that it could not fall into any street or public place ;

(72) "special fund" means a fund constituted under Section 139 ;

(73) "State Government" means the Government of Uttar Pradesh ;

(74) "street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, foot-way, sub-way, court, alley or riding path or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years ; and, when there is a foot-way as well as a carriage way in any street, the said term includes both ;

(75) "street alignment" means the line dividing the land comprised in and forming part of a street from the adjoining land ;

(76) "sweetmeat shop" means any premises or part of any premises used for manufacture, treatment or storage for sale or for the sale, wholesale or retail, of any ice-cream, confections or sweetmeats, whatsoever, for whomsoever intended, and by whatsoever name the same may be known, and whether the same be for consumption on or outside the premises ;

(77) "theatre tax" means a tax on amusement or entertainments ;

(78) "trade effluent" means any liquid either with or without particles of matter in suspension therein, which is so wholly or in part produced in the course of any trade or industry carried on at trade premises and in relation to any trade premises, means any such liquid as aforesaid which is so produced in the course of any trade or industry carried on at those premises, but does not include domestic sewage ;

(79) "trade premises" means any premises used or intended to be used for carrying on any trade or industry ;

(80) "trade refuse" means and includes the refuse of any trade, manufacture or business ;

(81) "vehicle" includes a carriage, cart, van, dray, truck, hand-cart, bicycle, tricycle, motor-car and every wheeled conveyance which is used or is capable of being used on a street.

(82) "ward" means a ward provided by Delimitation Order under Section 32 ;

(83) "water closet" means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action ;

(84) "water connection" includes—

(a) any tank, cistern, hydrant, stand-pipe, meter or tap, situated on a private property and connected with a water-main or pipe belonging to the Mahapalika, and

(b) the water-pipe connecting such a tank, cistern, hydrant, stand-pipe, meter or tap with such water-main or pipe ;

(85) "water-course" includes any river, stream, or channel whether natural or artificial ;

(86) "water for domestic purposes" shall not include water for cattle or for horses, or for washing vehicles, when the cattle, horses or vehicles are kept for sale or hire, or by a common carrier, and shall not include water for any trade, manufacture or business, or for building purposes, for watering gardens, or streets or for fountains or for any ornamental or mechanical purposes ;

(87) "waterworks" includes a lake, stream, spring, well, pump, reservoir, cistern, tank, duct, whether covered or open sluice, main-pipe, culvert, engine, water-truck, hydrant, stand-pipe, conduit and machinery, land, building or thing for supplying or used for supplying water or for protecting sources of water-supply ;

(88) "workshop" means any building, place or premises, or any part thereof, not being a factory, to or over which the employer or the persons working therein have the right of access or control and in which or within the

compound or precincts of which, any manual labour is employed or utilized in aid of or incidental to any process for the following purposes ;

- (a) the making of any article or part thereof, or
- (b) the altering, repairing, ornamenting or finishing of any article, or
- (c) the adopting for sale of any article.

Comments

Appointed day.—February 1, 1960 is the appointed day in this Adhinyam¹.

Sub-clause (6)—“Building”—Scope.—In the corresponding section 2 (2) of the U. P. Municipalities Act, 1916, the words “walls including compound walls and fencing” were not existing. In the present definition it is a modification enlarging scope of this word ‘building’ and it was so necessitated because it was earlier held under the former Act that a compound wall which is entirely detached from the house² or a boundary wall is not a building or a part of building.³

The words “other such portable and merely temporary shelter” should be taken ‘*ejusdem generis*’ with what precedes viz, tent, though it is not strictly necessary for the exception to apply that the shelter should be made of cloth or canves, e.g., a roof consisting of nothing but a reed screen spread over bamboo poles cannot be a ‘building’. Shed made of straw and slanting on either side, supported on four poles, cannot invariably be considered to be a ‘building’ but a ‘Chhappar’ may be a building if its dimensions are sufficiently large⁴. In another recent case this view in respect of ‘Chhappar’ was distinguished in *Municipal Board v. Abdul Majid*⁵ it was held that if a temporary shelter made of ‘Sirki’, is spread or put up in front of a shop to afford protection against sun and rain and if it is of a small size so that it can be removed without damage or materially affecting its condition then it must be regarded as portable in character. The two shelters in question were 10' x 6' and 10' x 4' only in dimensions. These two Chhappars of Sirki were so small in size that they could be easily removed intact and must therefore be regarded as portable. As there is no doubt that they were temporary shelters being in this way portable they were excepted from the definition of building.

In *Muir v. William*⁶, the term has been interpreted to mean a block or stone work covered with a roof.

In an English case reported, in *re St. Peter the Great, Chichester*⁷, Chancellor Buckle, had to consider what the word ‘building’ meant. Three tests were suggested to him for the decision of the question and he accepted them as correct. The three tests were :—

1. Vide Noti. No. 41-Ma-Pra-II/XIC-12-Corp-59, dated 18th January, 1960, published in U. P. Gazette Extra., dated 18th January, 1960.
2. *Lalit Narain Dubey v. The State*, 1957 A. L. J. 711.
3. *Corporation of Calcutta v. Binoy Krishna Bose*, 18 C. W. N. 484.
4. *Bala Prasad v. Muzammil Hussain*, 1934 A. L. J. 541 : A. I. R. 1934 All. 197.
5. 1970 A. W. R. 150 (151).
6. (1892) 1 Q. B. 264.
7. 1961 (2) All. E. R. 513.

- (1) Would an ordinary man think that the structure was a building.
- (2) Has the relevant structure four walls and a roof, and
- (3) Can anyone say that the structure was built.

He pointed out that the first test had been formulated on the basis of some of the general observations made by Chitty, J., in *Harris v. De Pinna*¹. The second test had been taken from *Moir v. Williams*² and the 3rd test was based on the observations in *South Wales Aluminium Company Ltd. v. North Area Assessment Committee*³.

These tests having been considered reasonable tests were applied by a Division Bench of the Allahabad High Court in *Newand Ram v. Gaon Samaj*⁴ for deciding as to whether a 'brick kiln' was a building and it was held that a brick kiln having no structure no roof and no wall at all cannot be called a building and the decision in *Devi Prasad v. Ghanshyam Das*⁵ was over ruled wherein it was held that it was possible for a kiln to be a building provided it is a permanent structure raised for use as a 'Bhatta'.

The question what is a building has been considered in many decisions, Indian, English, and American. It is not necessary to cite all of them as our Supreme Court laid down a principle in a decision which is probably unreported—*State of Bombay v. Sardar Venkat Rao Krishna Rao Gujar*.⁶ This decision was referred to by Mithan Lal, J., in *Mahesh Chand v. U. P. State*⁷. The Supreme Court observed that the word building in its literal meaning means something which is built, and would include virtually anything which is constructed or built, for example a chabutra. But the Court further observed that the literal meaning can not be applied in every case and must be modified according to the context of the Act in which the word "building" occurs, and the court must consider the purpose of the Act and whether the literal or a modified meaning will serve or frustrate this purpose. See *Mowasi Ram v. Sheikh Kanno*.⁸

However the following have been held to be a building :

- (i) a cowshed (15 C. W. N. 84) ;
- (ii) a verandah, vide *Brij Mohan v. The Chairman, Daltonganj* (A. I. R. 1922 Pat. 118) ;
- (iii) a wooden shed with roof, vide *Nandumal v. Municipal Committee, Simla* (A. I. R. 1925 Lah. 252), there appears to have been taken a contrary view by the Calcutta High Court in *Tripendeshwar v. Corporation of Calcutta* (1939 Cal. 84).
- (iv) a chhappar if its dimensions are sufficiently large, vide *Bala Prasad v. Muzammil Hussain* (A. I. R. 1934 Alld. 190 : 1934 A.L.J. 541) ;

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1. (1886) 33 Ch. D. 238.
 2. (1892) 1 Q. B. 264.
 3. (1943) 2 All. E. R. 587.
 4. 1961 A. L. J. 910 (914).
 5. 1961 A. L. J. 193.
 6. C. A. No. 455 of 1959, decided on 6th April, 1962.
 7. 1963 A. L. J. 439.
 8. 1965 A. L. J. 194 (185).

- (v) a permanent chabutra with a shed (A. I. R. 1933 Alld. 657 : 1933 A. L. J. 1190 : 34 Cr. L. J. 217) ;
- (vi) Flimsy structure like a jhopari with thatched roof is a building, vide *Ram Dularey v. D. D. Jain* (1965 A. L. J. 722);
- (vii) A house, a shop, a garrage or a godown, if it provides shelter for those who live or carry on business or work in it or if it is used for storing goods, vide *Ram Dularey v. D. D. Jain* (1965 A. L. J. 722 (725));

Sub-Clause (10).—The special meaning attached to this ordinary word 'City' has made it a technical term under this Act whereby only a town so declared by a notification in the official gazette as provided under Section 3 of this Act to be a city, can be treated a City under this Act.

So far the Kaval towns, viz., Varanasi¹, Agra², Kanpur³, Lucknow⁴ and Allahabad⁵ have been declared under section 3 of this Act to be City under this Act.

Sub-Clause (23)—Factory—Definition.—Under Section 2 (m) of the Indian Factories Act, 1948 (and not in the U. P. Factories Act) the word 'factory' has been defined as under :—

"factory" means any premises including the precincts thereof—

- (i) Whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed.

1. Vide Notification No. 69-Corp./XI-C-7 Corp. (Varanasi)-58, dated 10th February, 1959, published in Extra. *Gazette*, dated 10th February, 1969.
2. Vide Notification No. 70-Corp./XI C-Corp. (Agra), dated 10th February, 1959, published in Extra. *Gazette*, dated 11th February, 1959.
3. Vide Notification No. 72-Corp./XI-C. Corp. (Kanpur) 58, dated 11th February, 1959, published in Extra. *Gazette*, dated 11th February, 1959.
4. Vide Notification No. 73-Corp./XI-C-7 Corp. (Lucknow), dated 11th February, 1959, published in Extra. *Gazette*, dated 11th February, 1959.
5. Vide Notification No. 75-Corp./XI-C-7 Corp. (Allahabad)-58, dated 13th February, 1959, published in Extra. *Gazette*, dated 13th February, 1959. Supplemented by notification, published in U.P. *Gazette* dated 23rd May, 1969.

Scope.—A manufacturing process carried on in a premises may be only seasonal and yet the premises would be a factory.¹

The term “precincts” means a space enclosed by walls, vide *In re K.V.V. Sarma*², *State v. Ardeshir*³.

“Workers” include persons employed temporarily to carry out certain repairs upon the machinery required for manufacturing process, vide *Hari Kishan v. State*⁴.

Sub clause (38)—Member of a Mahapalika.—Under the Municipalities Act, it was held that the membership of a person of a Municipal Board continues even during the period the Board remains superseded and it will also continue in the event the period of supersession is extended but as soon as the supersession is not extended and comes to an end it automatically brings cessation of that person’s membership of the Board and on this principle a writ was held to have become infructuous because on the date the writ (against the State Government’s order of supersession) was to be decided the supersession of that Board had not been extended. (This was, however, a case for a writ of *mandamus* and *Certiorari* and not that of *quo warranto*), vide *State of U. P. v Municipal Board*⁵.

Section 2(55) Analogous Law—Section 2(17) of Municipalities Act—Word “Prescribed” in this sub-clause is to be read in the light of the words “as may be prescribed” occurring in section 160 (2) and would mean “such authority as may be prescribed by the State Government without making a rule under Section 296 of the Act for prescribing the appellate authority, vide *Kanpur Municipality v. Addl. Commissioner, Kanpur*⁶.

Section 2 (56) Analogous Law—Section 2 (17) of the Municipalities Act—Scope—In terms this Sub-section provides that the Commissioner shall be the Prescribed Authority only in the event of an officer or a body corporate not having been appointed as such by the State Government. It is significant to note that in the definition of the Prescribed Authority the article ‘an’ has been used before the word ‘officer’ and ‘A’ before “body corporate” which, we think, indicate the intention of the legislature that there could be only one Prescribed Authority for the Area. The presence of more than one Prescribed Authority may create mutual conflicts, disputes about over-lapping powers and consequent inconvenience to all concerned. Accordingly we are of opinion that there can be only one Prescribed Authority, vide *Notified Area v. G. Das D.Mal*⁷ a case under the Municipalities Act.

Section 2 Sub-clause (74)—Street—Analogous Law—Section 2 (19) Municipalities Act.—Meaning—The term has been used in Section 2 (19) of the Municipalities Act and it was held in *Arjun Lal v. Maharaja Man Singh*⁸ that it includes a public street.

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1. A. I. R. 1952 Alld. 102 (111).
 2. A. I. R. 1953 Mad. 269 (278) (D. B.).
 3. A. I. R. 1956 Bom. 219 (222) : I. L. R. 1956 Bom. 321 : 1956 Cr. L. J. 488 (D. B.)
 4. 1959 Cr. L. J. 1396 : 1959 Alld. 794.
 5. 1970 A.L.J. 961 (968) D.B.)
 6. A.I.R. 1969 Alld. 177 (180) (D.B.)
 7. 1971 A.L.J. 227 (230) (D.B.)
 8. 1934 A.L.J. 418.

The word 'Street' as such includes private as well as public street but that street is deemed a public street over which the public have a right of passage or access uninterruptedly for 20 years or which is so declared by the Mukhya Nagar Adhikari under section 290 of this Act to be a public Street.

Includes—The word "includes" has been defined : "Where a term is interpreted in a statute as including, etc., the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring that things may be comprehended within the terms where the circumstances require that they should", vide *Bapu Vihari v. Secretary of State*¹ and *Darbari Lal v. Dharamwati*².

Section 2(86)—Water for domestic use—Scope—Water for trade or business, signifies dealings for profit exclusively in water and water for manufacture means where water is used as a raw material for manufacturing or making a saleable commodity, e.g. ice and such other edibles. Where water is not used exclusively and directly as a commodity for sale or for fabricating some saleable material, its use for drinking and bathing purposes by those who are carrying on business of various denominations cannot be excepted from "water for domestic purposes". Water used for meeting the bare physical necessities of drinking and bathing whether by the owner of the house or by his tenants is nothing else but for domestic use.

When the water is used for meeting the basic requirements of a human being for his existence and habitation it cannot be but for domestic use, as it makes his domicile conveniently possible in this world. Water used for drinking and bathing purposes by human beings, whether in a hotel or in their own residence cannot be but for domestic use as such use is indispensable for their habitation and existence. It is the particular use of the water that matters and not as to who uses it, vide *Nirankar Nath v. Municipal Board, Faizabad*³. Reliance was placed on the *Masulipatam Municipal Council v. The Brundage Talkies Ltd.*,⁴ where it was held that :

"When water is used and consumed by the servants of a cinema, by the visitors and utilised also for the coffee hotel and latrines and flush outs, all these uses are undoubtedly domestic uses and water is not utilised as part of the stock-in-trade of the business of running the cinema" and the case of *A. R. Sethumadhawan v. Vishakhapatnam Municipality*⁵ was distinguished on facts.

3. Declaration of local areas to be cities for purposes of the Act:—(1) The State Government may from time to time by notification in the official *Gazette* constitute any local area lying within such limits as are specified in the notification to be a City by such name as it may specify.

(2) The State Government may also from time to time, after consultation with the Mahapalika, by notification in the official *Gazette* alter the limits specified for any City under sub-section (1) so as to include therein or to exclude therefrom, such area as may be specified.

1. A.I.R. 1932 Bom. 370.

2. A.I.R. 1957 Allahabad 541 (545) (F.B.)

3. 1969 A.L.J. 519 (520)

4. A.I.R. 1953 Mad. 864.

5. A.I.R. 1964 A.P. 280.

(3) The power to issue a notification under this section shall be subject to the condition of previous publication.

CHAPTER II

Constitution and Governance of Mahapalika

4. **Mahapalika for every City.**—For every City there shall be a Mahapalika which shall, by the name of “The Nagar Mahapalika of the City of..... (name of the City)” be a body corporate and have perpetual succession and a common seal and by such name may sue and be sued.

5. **Mahapalika authorities.**—The Mahapalika authorities charged with carrying out the provisions of this Act for each City shall be—

- (a) the Mahapalika ;
- (b) an Executive Committee of the Mahapalika ;
- (c) a Development Committee of the Mahapalika ;
- (d) a Mukhya Nagar Adhikari appointed for the Mahapalika under this Act ; and
- (e) in the event of the Mahapalika establishing or acquiring electricity supply or public transport undertaking or other public utility services, such other committee or committees of the Mahapalika as the Mahapalika may with the previous sanction of the State Government establish with respect thereto.

6. **Constitution of the Mahapalika.**—(1) The Mahapalika shall consist of a Nagar Pramukh, and—

- (a) Sabhasads whose number shall be such as the State Government may, by notification in the official *Gazette* fix, but not exceeding ninety, and
- (b) Vishishta Sadasyas whose number, as nearly as may be, shall be one-ninth of the total number of Sabhasads fixed under clause (a).

(2) The Vishishta Sadasyas shall be elected by the Sabhasads and the Sabhasads shall be elected at ward elections.

Comments

Strength of Mahapalikas declared.—Under section 6 (1) (a) and (b) the State Government¹ has declared the following number of Sabhasads and Vishisht Sabhasads for the different cities :

| City | Sabhasads | Reserved for Scheduled caste among Sabhasads | Vishisht Sabhasads |
|-----------|-----------|--|--------------------|
| Kanpur | 72 | 6 | 8 |
| Allahabad | 54 | 5 | 6 |
| Varanasi | 54 | 4 | 6 |
| Agra | 54 | 8 | 6 |
| Lucknow | 63 | 5 | 7 |

1. Notification No. M-150/XI—A—31-C—59 dated April 19, 1959 published in the U. P. *Gazette* (extra.) dated April 19, 1959.

7. Reservation for Scheduled Castes.—(1) Out of the total number of Sabhasads fixed under section 6 such number shall be reserved for the Scheduled Castes as shall bear, as nearly as may be, the same proportion to such total number as the population of Scheduled Castes in the City bears to the total population of the City [as ascertained at the last preceding census of which the relevant figures have been published].¹

Provided that nothing in this section shall prevent members of the Scheduled Castes from standing for election to the non-reserved seats.

(2) The reservation for Scheduled Castes provided under sub-section (1) shall continue to have effect only up to the date up to which reservation for such Castes exists under the Constitution of India :

Provided that nothing in this section shall affect the representation to any reserved seat on the expiry of the date aforesaid until a fresh election becomes due under the provision of this Act to fill such seat.

8. Duration of Mahapalika.—Except as provided in Section 538 or 539 the Mahapalika shall continue for five years from the date of notification issued in pursuance of Section 9 that the Mahapalika has been duly constituted :

Provided that the State Government may, by notification in the official *Gazette*, extend from time to time the term of the Mahapalika so however that the extension does not in the aggregate exceed one year :

Provided further that the State Government may, in the case of some grave emergency or other similar cause, similarly extend the term of the Mahapalika for a further period or periods which in the aggregate do not exceed one year.

Comments

Dissolution in the midterm.—The State Government has been empowered to dissolve Corporation in any City by virtue of the Sections 538 and to supersede under Section 539 even in the mid term thereof according to the manner and procedure laid therein.

9. Notification of Constitution of Mahapalika.—As soon as may be after the election of the Sabhasads, Vishishta Sadasyas and the Nagar Pramukh of a Mahapalika for any City has been completed, the State Government shall notify by publication in the official *Gazette* that the Mahapalika for that City has been duly constituted.

Nagar Pramukh and Upa Nagar Pramukh

10. Upa Nagar Pramukh.—(1) There shall be an Upa Nagar Pramukh for each Mahapalika.

(2) While the Nagar Pramukh is for any reason unable to act, or the office of Nagar Pramukh is vacant, all the duties of the office shall be performed by the Upa Nagar Pramukh until the Nagar Pramukh resumes his duties or, as the case may be, the vacancy is filled.

11. Qualification for election as Nagar Pramukh and Upa Nagar Pramukh.—(1) No person shall be qualified for election as Nagar Pramukh—

1. Subs. by U. P. Act XXI of 1964.

- (a) if he is not an elector in the City ;
- (b) if he has not attained the age of 30 years ;
- (c) if he is disqualified under sub-section (1) of Section 25 for election as a Sabhasad or Vishishta Sadasya ; or
- (d) if he was defeated at the poll at an election to any seat of Vishishta Sadasya or Sabhasad unless at least six months have elapsed since the date of declaration of the result of that election.

(2) Subject to the provisions of sub-section (1), an outgoing Nagar Pramukh shall be eligible for re-election.

(3) No person who is not a member shall be eligible for election as Upa Nagar Pramukh.

Comments

Nagar Pramukh.—The Section does not prohibit, as in the case of Upa Nagar Pramukh, that a person who is not a member of the Mahapalika shall not be eligible for becoming a Nagar Pramukh.

But the disqualification enumerated for election as a Sabhasad or Vishishta Sabhasad, as laid under section 25(1) of this Act, is also attached with the election of a Nagar Pramukh.

Upa Nagar Pramukh.—The qualification for becoming an Upa Nagar Pramukh are those as enumerated in Section 24 for becoming a Sabhasad.

But it appears that no disqualification, as laid in sub-clause (1) (c) of this section in relation to Nagar Pramukh, has been attached with the Upa Nagar Pramukh.

However, in relation to both the posts of Nagar Pramukh and Upa Nagar Pramukh whatever has been provided relates to their "Seeking election" only but not "for being" or continuing a Nagar Pramukh or Upa Nagar Pramukh as has been specifically provided in respect of Sabhasads and Vishisht Sabhasads under section 25 (1). It means after the election of the aforesaid persons, there is no restriction clause in respect of their continuing as such.

12. Election of Nagar Pramukh and Upa Nagar Pramukh.—(1) The first Nagar Pramukh and the Upa Nagar Pramukh shall be elected, as soon as may be, after the election of Sabhasads, and the election of Vishishta Sadasyas to constitute the Mahapalika have been completed.

(2) Thereafter the Nagar Pramukh shall be elected annually before such date as may be prescribed.

(3) The Nagar Pramukh and the Upa Nagar Pramukh shall be elected by the members in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(4) If an Upa Nagar Pramukh is elected Nagar Pramukh the office of the Upa Nagar Pramukh shall become vacant from the date the Upa Nagar Pramukh holds the office of Nagar Pramukh.

(5) The provision of Section 47 shall, as far as may be, be applied to the election of Nagar Pramukh and Upa Nagar Pramukh.

13 When election of Sabhasads to be deemed completed.—For the purpose of Section 9 and the election of Vishishta Sadasyas, Nagar Pramukh and Upa Nagar Pramukh the election of the Sabhasads shall, notwithstanding any seat remaining unfilled, be deemed to be completed if at least four fifth of the total number of Sabhasads fixed under Section 6 have been elected.

Comments

Election of Sabhasad to complete—When.—It completes as soon as the result of at least four-fifths of the total number of Sabhasads is declared. But it does not depend upon the taking of oath or affirmation as required under section 85 of this Act (although it is a different aspect whether he can participate in the Mahapalika meetings or not.)—See *G. P. Chaturvedi v. D. M. Jalaun*¹

14. Casual vacancy in the office of Nagar Pramukh or Upa-Nagar Pramukh.—If a casual vacancy occurs in the office of Nagar Pramukh or Upa Nagar Pramukh owing to death or resignation or any other cause a Nagar Pramukh or Upa Nagar Pramukh, as the case may be, shall be elected as soon as may be thereafter in the manner provided under Section 12 :

Provided that where the remainder of the term is two months or less the vacancy shall remain unfilled unless the Mahapalika resolves otherwise.

15. Terms of Nagar Pramukh and Upa Nagar Pramukh.—(1) Subject as otherwise provided in this Act the term of office of a Nagar Pramukh shall be one year and the term of office of an Upa Nagar Pramukh shall be co-terminus with the term of the Mahapalika.

(2) The term of office of a Nagar Pramukh or an Upa Nagar Pramukh elected to fill a casual vacancy shall be the remainder of the term of office of his predecessor.

(3) A Nagar Pramukh or an Upa Nagar Pramukh shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor assumes office as Nagar Pramukh or Upa Nagar Pramukh as the case may be.

Comments

Ceases to be qualified.—(i) *Nagar Pramukh.*—See Section 11 (a), that is, till he remains an elector.

(ii) *Upa Nagar Pramukh.*—See section 11 (3), that is, till he remains an elector and member of the Nagar Mahapalika.

In both the cases, cessation may take place even in view of Section 85 of this act by not taking oath or affirmation within the time prescribed therein.

Becomes disqualified.—Nagar Pramukh and Upa Nagar Pramukh—See section 11 (c) read with section 25 of this Adhiniyam.

16. Motion of non-confidence against Upa Nagar Pramukh.—(1) A motion expressing non-confidence in the Upa Nagar Pramukh shall be made only in accordance with the procedure laid down in this section.

(2) No notice of a motion of non-confidence under this section shall be received within twelve months of the assumption of office by an Upa Nagar Pramukh.

(3) Written notice of intention to make a motion of non-confidence in the Upa Nagar Pramukh signed by such number of members of the Mahapalika as constitute not less than one-half of the total number of members of the Mahapalika, together with a copy of the motion which it is proposed to make, shall be delivered by any two of the members signing the notice to the Commissioner of the Division in which the City is situate.

(4) The Commissioner of the Division shall then convene a meeting for the consideration of the motion to be held at the office of the Mahapalika, on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty-five days from the date on which the notice under sub-section (3) was delivered to him. He shall send not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time appointed therefore, to every member of the Mahapalika at this place of residence and shall at the same time cause such notice to be published in such manner as he may deem fit. Thereupon every member shall be deemed to have received the notice.

(5) The Nagar Pramukh shall preside at the meeting convened under this section and no other person shall preside thereat. If within half an hour from the time appointed for the meeting, the Nagar Pramukh is not present to preside at the meeting, the meeting shall stand adjourned to the date and time to be appointed by the Nagar Pramukh under sub-section (6).

(6) If the Nagar Pramukh is unable to preside at the meeting, he may, after recording his reasons adjourn the meeting to such other date and time as he may appoint, but not later than fifteen days from the date appointed for the meeting under sub-section (4). He shall without delay communicate in writing to the Commissioner of the Division the adjournment of the meeting. It shall not be necessary to send notice of the date and the time of the adjourned meeting to the members individually, but the Commissioner of the Division shall give notice of the date and the time of the adjourned meeting by publication in the manner provided in sub-section (4).

(7) If there is no Nagar Pramukh in office or if the Nagar Pramukh does not comply with the provisions of sub-section (6) or fails to preside at the adjourned meeting (which shall again stand adjourned in such a case), then notwithstanding anything in sub-sections (5) and (6)—

(a) the District judge and in his absence the judicial officer who has assumed charge of the duties of the District Judge shall preside at the meeting or the adjourned meeting, as the case may be ;

(b) the date and time for the adjourned or re-adjourned meeting, as the case may be, shall be fixed by the Commissioner of the Division who shall give notice thereof in the manner provided in sub-section (6) ; and

(c) all references hereinafter in this section to the Nagar Pramukh shall be deemed to be references to the aforesaid District Judge or Judicial Officer, as the case may be.

(8) Save as provided, in sub-section (5), (6) & (7) a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(9) As soon as the meeting convened under this section has commenced, the Nagar Pramukh shall read to the members present the motion for the consideration of which it has been convened and declare it to be open for discussion.

(10) No discussion on any motion under this section shall be adjourned.

(11) Such discussion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting, unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of three hours, as the case may be, the motion shall be put to the vote of the Mahapalika.

(12) The Nagar Pramukh shall not speak on the merits of the motion, nor vote thereon.

(13) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall, on the termination of the meeting, be forwarded forthwith by the Nagar Pramukh to the Upa Nagar Pramukh and the Commissioner of the Division.

(14) As soon as may be after three days of the receipt of the copies mentioned in sub-section (13), the Commissioner of the Division shall forward the same to the State Government, together, in the event of the motion of non-confidence having been carried, with a report whether or not the Upa Nagar Pramukh has forwarded his resignation in accordance with the provisions of sub-section (17) read with Section 19.

(15) The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total numbers of members of the Mahapalika.

(16) If the motion is not carried as aforesaid, or if the meeting cannot be held for want of a quorum, no notice of any subsequent motion of non-confidence in the same Upa Nagar Pramukh shall be received until after the expiry of a period of twelve months from the date of meeting.

(17) On a motion of non-confidence in the Upa Nagar Pramukh having been passed and communicated to him in accordance with this section, the Upa Nagar Pramukh shall—

(a) within three days of the receipt of such communication, either resign his office or represent to the State Government to dissolve the Mahapalika stating his reasons therefor ; and

(b) on the expiry of three days after the date of receipt of such communication, stop acting as Upa Nagar Pramukh.

(18) In the event of failure of the Upa Nagar Pramukh to act in accordance with clause (a) of sub-section (17) within the time allowed under that sub-section, the State Government shall remove him with effect from a date to be specified in the order and any person so removed shall notwithstanding anything elsewhere in this Act be not eligible for re-election to fill any casual vacancy occurring before the general election next following.

(19) If a representation has been made in accordance with sub-section (17), the State Government may after considering the same either ask the Upa Nagar Pramukh to resign or dissolve the Mahapalika including the Nagar Pramukh.

(20) If the State Government ask the Upa Nagar Pramukh to resign under sub-section (19) he shall within three days of the receipt of the order resign the office of Upa Nagar Pramukh.

(21) In the event of failure to resign within the time allowed in sub-section (20) the Upa Nagar Pramukh shall be removed by the State Government and shall not be eligible for re-election at the next election of the Upa Nagar Pramukh or to fill up any casual vacancy occurring before the next general election of the Mahapalika.

(22) If the State Government dissolves the Mahapalika under sub-section (19) the consequence mentioned in Section 538 shall follow as if there had been a dissolution under that section.

(23) Nothing done by any member of the Mahapalika, the Commissioner of the Division, the Nagar Pramukh or the State Government in pursuance of the provisions of this section shall be questioned in any Court.

Comments

Analogous law.—Sub-section (3) and (15) of this Section are analogous to section 87-A (2) and (13) along with section 47-A of the U. P. Municipalities Act besides other sub sections in section 87-A which are mostly similar and 8 other sub-sections have been added in this section 16 more than in section 87-A.

No confidence motion.—Notice of.—It can be signed by such members who have although been elected as Sabhasad but have not yet taken oath or affirmation as required under Section 85 of this Act as held in *G. P. Chaturvedi v. D. M. Jalaun*¹ in the similar circumstances under the analogous provisions of the U. P. Municipalities Act because there is no expression providing that the President (or any member) shall make or subscribe the oath or affirmation “before entering upon his office” as contained in Art. 60 of the Constitution. But this case appears not to apply to the Nagar Mahapalika Act because in sub-clause (3) the words “shall not... ..do any act as Sabhasad” besides “shall not take his seat” have been used specifically.

Members of the Mahapalika.—This expression does not denote to relate only to the elected members of the Mahapalika as the qualifying word “elected” has not been used together with the expression “Members of the Mahapalika” in this section particularly in view of the definition of expression “Member of a Mahapalika” in section 2 (38) of this Adhiniyam which means Vishishta Sadasaya, Upa Nagar Pramukh and a Nagar Pramukh as well. See *Abdul Qayum v. Keshav Saran*².

“Total number of members of Mahapalika”.—Meaning.—But the question remains whether such members denote to the ‘total number of members as constitute the statutory strength of that Mahapalika’ or ‘the number of members at a relevant time’ There is no such qualifying clause used with this expression but without adding any clause to it and only by giving these words their normal meaning it would mean the total number of members of the Mahapalika as it was composed at the time of motion of non-confidence, i. e., at the relevant time. See *Bhaiya Lal v. P. N. Tewari*³ where the meaning of the word “Board” as used in the analogous provisions of the Municipalities Act was discussed. Although this case was dissented in the Full Bench case *M. P. Jaiswal v. District Magistrate*⁴ but the meaning of that word appears to be dittoed when it was held that it “used to convey the totality of the members provided for a complete constitution of the body”. However, the meaning of this expression has now come at rest by another Full Bench

1. 1956 A. L. J. 58 (60) (D. B.).

2. A. I. R. 1964 Alld. 386 (389) (D. B.).

3. 1970 A. L. J. 36 (39) (D. B.) : 1970 A. W. R. (Journal) 8.

4. 1970 A. L. J. 1122 (1129) (F. B.) : A. I. R. 1971 Alld. 77.

*Mangala Prasad v. District Magistrate, Gorakhpur*¹ where it was specifically considered and held that it means "the total number of members who initially (and not at any relevant time) constitute the Board and consequently the existence of any casual vacancy at a particular time is irrelevant for calculating the total number of members for the purposes of this section.

In the case of *State of U. P. v. Municipal Board*², it was observed that even during the period of supersession of a Board (under the Municipalities Act) the membership of 4 persons of the Board continues and it ceases when the supersession is not extended.

*Upa Nagar Pramukh.—Whether elected or otherwise—*In *Abdul Qayum v. Keshav Saran*³, the validity of the no-confidence motion was challenged on only one ground, viz., that, under the provisions of the U. P. Municipalities Act, there was no provision for a no-confidence motion being moved against a president elected in a casual vacancy and that the provisions of the various sub-sections of section 87-A could only be applied to the case of a president elected in a general election. In terms, we find that there is nothing in the language of section 87-A of the U. P. Municipalities Act which may lead to any such conclusion. Section 87-A, in its various sub-sections uses the word 'President' without laying down any qualification that the president must be a person who was elected in a general election and cannot be one elected as president in a casual vacancy. On the face of it, therefore, if Section 87-A of the U. P. Municipalities Act is read by itself, it would be clear that the claim that the no-confidence motion was *ultra vires*, illegal and null and void was without any substance at all and would have to be treated as frivolous. Also see the Head note "Members of the Mahapalika" under this Section.

Decision cannot be challenged in the Civil Court.—Refer to sub-section (23) of this section. See *Abdul Qayum v. Keshav Saran*.³

Majority of more than half.—This sub-section, like its predecessor sub-section (12) of Section 87-A is some what ambiguously worded, and the words "of more than half" were unnecessarily added and are redundant as was held in *G. P. Chaturvedi v. D. M. Jalaun*⁴. It meant only a bare majority of the members of the Mahapalika. The same view was taken in *L. N. Shukla v. State of U. P.*⁵

Reading of the motion and declaring it to be open for discussion.—This is no doubt an important formality in the proceedings for considering a no-confidence motion but it is doubtful whether, in absence of prejudice to the parties concerned, non-compliance of this formality would be such an illegality so as to undone an otherwise duly passed no-confidence motion. In the case of *G. P. Chaturvedi v. D. M. Jalaun*⁴, the High Court did not think the non-observance of this formality a serious one in view of the fact that the High Court was then exercising a jurisdiction under Article 226 of the Constitution which was discretionary. In the Full Bench case of *Mahesh Chand v. Tara Chand*⁶ it was held that the provisions of Section 87-A (analogous to this section) no where indicate that it was obligatory on the presiding officer to read out the actual words of the motion of no-confidence, a copy of which was handed over to the District Magistrate by the members of the Board under sub-section (2).

1. 1970 A. W. R. 649 (654) (F. B.).
2. 1970 A. L. J. 964 (968) (D. B.).
3. A. I. R. 1964 Alld. 386 (389) (D. B.)
4. 1956 A. L. J. 58 (61) (D. B.): 1956 A. W. R. 790.
5. 1959 A. L. J. 853 (855).
6. A.I.R. 1958 Alld. 374 (385) (F.B.).

No-confidence motion.—As held by the Full Bench of the Allahabad High Court while considering similar provisions under Section 87-A in *Mahesh Chand v. Tara Chand*¹, a motion means a proposal and nothing more. The statute does not provide for any specific words in which the motion of non-confidence has to be made, nor does it prescribe that the motion which is to be put for consideration of the meeting by the presiding officer under sub-section (7) has to be in the words the very words in which the motion or proposal was made in the requisition under sub section (2).

It is enough compliance with the provisions of sub-section (3) for the District Magistrate while convening the meeting to say that a meeting is being convened for consideration of a motion of non-confidence signed by more than half the members of the Board against the President and it is also sufficient compliance with the provisions of sub-section (7) to read the motion as contained in the notice issued by the District Magistrate under the provisions of sub-section (3).

Calling, holding and conduct of the meeting.—Mandatory.—The provisions of section 87-A can be broadly divided into two portions, one, dealing with the provisions which relate to the calling of the meeting and the actual holding of the meeting as also the conduct of the meeting itself; and the other, dealing with what is to follow the termination of the meeting.

The first portion of this section is mandatory in its scope, but not the second portion. The words "a motion expressing non-confidence in the President shall be made only in accordance with the procedure laid down below" in section 87-A (1) can and do refer only to the calling of the meeting and the holding of the meeting and not to acts which have to be performed subsequent to the meeting.

The act of sending a copy of the minutes of the meeting along with a copy of the motion and the result of the voting thereon after the termination of the meeting is not part of the making of "a motion expressing non-confidence in the President".

The legislature could not be deemed to have ever intended that ministerial acts necessary upon the passing of the motion at a properly constituted meeting should be viewed with the same strictness as steps leading up to the meeting and the transaction of the business at the meeting, because the latter affected the rights of a party while the former did not.

A motion of non-confidence is a potent weapon in the hands of an elected body, whereby that body keeps under check its officers. It also is a matter of great significance and vital importance to the officers that such motions are not lightly made or carried through without due regard being had to the prescribed form for their passing, but after a motion has been properly made and passed by a body competent to pass it, it becomes of vital importance thereafter that effect should be given to the motion and mere procedural errors, such as errors in its communication, etc., should not have the effect of setting at naught the duly recorded view of the statutory majority, vide *Mahesh Chand v. Tara Chand*².

Calling of meeting—Sending of motion to the members along with the notice of meeting—Requisites—The law does not require that the full text of the motion for non-confidence need be supplied to the members of the Mahapalika along

1. A. I. R. 1958 Alld. 374 (385) (F.B.).

2. A. I. R. 1958 Alld. 374 (385) (F. B.)

with the notice of holding the meeting is concerned. It is enough that the substance of the motion is made known to the members in the notice circulated to them for the meeting to be held to consider the same. Section 16 (1) says that a motion expressing non-confidence in the Upa Nagar Pramuks shall be made only in accordance with the procedure laid down in this section. The requisites of such a notice and the procedure to be followed for the form of notice, if at all, is that laid down in section 16 (3) of this Adhiniyam like section 87-A (3) of the U. P. Municipalities Act but the above sub-section does not appear to lay down any guidance in this respect. As was observed in *Abdul Wahid v. State of U. P.*, while dealing the same subject matter under the analogous section 87-A of the Municipalities Act that it was highly desirable that the full text of the non-confidence motion was mentioned in the notice. However, it was also observed that where objection in respect of the absence of the full text in the notice of calling a meeting is not raised in the meeting itself, then it would be too late for any one of them to make it a ground of attack against the validity of the meeting.

Holding of meeting.—Requisites—There is no provision in the Act or in this section as to how such a meeting be conducted except the form of the meeting. To sum up, the following appear to be certain requisites which need also be observed :

- (a) Duration of such a meeting is 3 hours, vide sub-section (11) of this section.
- (b) Meeting must start within half an hour from the appointed time due to the late reaching of the Nagar Pramuks otherwise it shall stand adjourned, vide sub-section (5).
- (c) Meeting is to be presided by the Nagar Pramuks, vide sub-section (5).
- (d) If the Nagar Pramuks is unable to preside, the meeting shall stand adjourned, vide sub-section (6).
- (e) Adjourned meeting is also to be presided by the Nagar Pramuks, vide sub-section (7).
- (f) If the Nagar Pramuks again does not preside or does not comply with sub-sections (5) or (6), the meeting shall again stand adjourned.
- (g) A meeting shall stand adjourned if the requisite quorum is not present vide sub-section (16).
- (h) A re-adjourned meeting shall not be presided by the Nagar Pramuks but by the District Judge or an Officiating District Judge, vide sub-section (7) (a).
- (i) A re-adjourned meeting can never be adjourned again vide sub-section (8).
- (j) Presiding Officer shall read the motion and declare it open for discussion, vide sub-section (9).
- (k) No discussion in this respect shall be adjourned, vide sub-section (10).
- (l) Presiding Officer shall not speak on the merits of the motion, vide sub-section (11).

- (m) Presiding Officer shall not vote thereupon, vide sub-section (11).
- (n) Motion shall be passed by a majority of more than half of the total number of members.
- (o) A member should speak only once, vide *Abdul Wajid v. State of U. P.*¹
- (p) The mover of the motion be given an opportunity to reply to the debate, vide *Abdul Wajid v. State of U. P.*¹

*Whether section 16 (17) is ultra vires.—No—*This sub-section gives the Upa Nagar Pramukh a choice, either to resign at once when a motion of non-confidence has been passed against him or to ask the State Government to dissolve the Nagar Mahapalika. When he takes recourse to the latter alternative he has to give reasons why the Nagar Mahapalika should be dissolved. The reasons may be multifarious. The State Government has been given power to consider those reasons and then to decide whether to act upon the advice of the President by dissolving the Mahapalika or to ask the Upa Nagar Pramukh to resign. The State Government has to consider the reasons, give, and to weigh the *pros and cons* of the request made, by the Upa Nagar Pramukh and has to come to a decision either in favour of the request or against it. Obviously in such a case the State Government has to act reasonably as the circumstances of the case may require.

In such matters a discretion limited only to the two courses pointed out in the section is a discretion which cannot be said to be arbitrary or uncontrolled. It is controlled because the discretion is limited to the two courses, pointed in the section; and no further rules for the guidance of that discretion are feasible because the reasons given by the Upa Nagar Pramukh may be, as already stated, many and varied. It would be an impossible task to lay down rules in such matters as these. It is best to leave such matters to the State Government. The giving of such a discretion, in these circumstances, to the State Government cannot, by any stretch of imagination, be called the vesting of arbitrary power in the hands of the State Government, vide *Abdul Wajid v. State of U. P.*², a case exactly on the analogous provisions contained in section 47-A of the Municipalities Act dealing with the consequence of a non-confidence motion regarding a President after it is passed.

*“Together”—Meaning.—*The word ‘together’, however, not only means ‘in company’ but it also means ‘in conjunction’, or ‘united’. The word ‘together’ is made out of the word ‘gather’ which means ‘to bring together’; ‘to sum up’. If the intention of the legislature was that the presiding officer was to send three separate documents containing the three things mentioned in sub-section (11), then the legislature would have used the words ‘accompanied by’ or some like phrase and not the word ‘together’ for the legislature must be deemed to know that the word ‘together’ also means ‘incorporated’ because the word ‘gather’ means ‘to bring together’ and ‘to sum up’, vide *Mahesh Chand v. Tara Chand*³.

*Three separate documents—Need not be sent.—*On the plain meaning of the sub-section, therefore, it cannot, be said that three separate documents *viz.*, minutes, motion and result of voting, have to be sent to the President by the presiding officer at the termination of the meeting, vide *Mahesh Chand v. Tara Chand*³.

1. A. I. R. 1955 All. 708 (711) (D. B.)

2. A. I. R. 1955 All. 708 (711) (D. B.).

3. A. I. R. 1958 All. 374 (386) (F. B.).

Copy of minutes, copy of motion, result of voting—Could be in communication or separate.—The procedure for communication is not quite the same thing as the form of the communication or the contents thereof. The words 'in accordance' in Section 47-A (1) mean 'in conformity' or 'as provided for.' One has, therefore, to see to the procedure relating to the communication of the matter provided for in sub-section (11) and not to the form in which the matter communicated is expressed.

The intention of the legislature appears to be clear and that intention appears to be 'to provide for a procedure in regard to the communication which must, of course contain the subject matter of the communication, the subject matter is communicated under the first portion of sub-section (11), while the procedure for its communication is indicated in the latter portion of that sub-section, namely, where provision is made that the judicial officer shall on the termination of the meeting forward, forthwith to the President and the District Magistrate a copy of minutes, a copy of the motion and the result of the voting thereon. All these three things namely, a copy of the minutes, a copy of the motion and the result of the voting could be in one communication—Vide *Mahesh Chand v. Tara Chand*.¹

"In accordance with"—Meaning.—It means "in conformity" or "as provided for"—Vide *Mahesh Chand v. Tara Chand*.¹

No confidence motion—Whether can be moved against Nagar Pramukh—No—There does not appear any provision for moving a no-confidence motion against a Nagar Pramukh but it appears that he may be suspended by the State Government under section 84 of this Adhiniyam and that too for a period of 3 months only as provided in that section. The analogous section 87-A of the U. P. Municipalities Act relates to non-confidence of the President while the present section 16 relates to Upa Nagar Pramukh only.

Refusal to take poll—Not illegal.—The right to demand a poll has not become the common law in India as regards the law of meetings. The matter may be decided on broad principles. It appears that there is some scope for committing a mistake in counting votes from show of hands. Counting votes after a poll is likely to be more accurate, so, in cases where there is apprehension of a possible mistake in counting votes from a show of hands, the presiding officer would be well advised to take a poll. But it is not necessary to insist upon a poll in every case. The matter may well be left to the discretion of the Presiding Officer. In the case of *L. N. Shukla v. State of U. P.*², during the consideration of non-confidence motion two of the members present demanded poll but the Presiding Officer refused it. It was held that where 18 members out of 26 members consisting of the Board had supported the non-confidence motion, there was no much scope for a possible mistake and the refusal to take poll did not appear to have prejudiced the petitioner on merits, interference under Art. 226 of the Constitution would not be justified.

Notice of meeting—'Sending' and 'Publication'—Should be simultaneous—The statute declares that if the District Magistrate sends not less than seven clear days before the date of the meeting a notice of such meeting to a member of the Board at his place of residence and also cause such notice to be published in such manner as he may deem fit then such member shall be deemed to have received the notice. It is necessary in order that the fiction should operate that both steps be adopted by the District Magistrate. He must send

1. A.I.R. 1958 Alld. 374 (F. B.)

2. 1959 A.L.J. 853 (855).

the notice by registered post to the member at his place of residence, and at the same time cause the notice to be published in the manner he deems fit. It will not do if he adopts merely one of the two steps. The fiction operates only upon composition of the two steps. When the Legislature devises a fiction, the result which is the creature of the legislative artifice can be brought about only if all the components necessary to its birth are in existence. If any one or more of the components are absent, the legal fiction will not operate at all. That the adoption of one or the other step will not suffice to bring the legal fiction into existence is clear from the requirements in the provision that publication of the notice is contemplated "at the same time" at the occasion when the District Magistrate sends the notice, vide *V. N. Tripathi v. State of U. P.*¹.

Notice of meeting—Its service—Mandatory—To be duly constituted a corporate meeting must be convened by the proper authority, and must be held upon notice which gives, every member of the corporation entitled to attend, an opportunity of attending A corporate meeting may be valid where notice of it has not been given, provided all the members of the corporation are present and consent to the meeting being held. Where no specific day is fixed by the constitution and the object for which the meeting is required may be carried out at a meeting held at any time, it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate. If a member whom it is reasonably possible to summon is not summoned, the meeting will not be duly convened, even though the omission is accidental, or due to the fact that the member has informed the office whose duty it is to serve notice that he need not serve notice on him. A member who is out of reach not be served with notice"—(Halsbury's Laws of England 3rd Edn. Vol. 9, p. 40, Para 91). To the same effect are the principles extracted from the law obtaining in the United States (Corpus Juris Secundum Vol. 62, P. 753, para 397), vide *V. N. Tripathi v. State of U. P.*², *J. K. Paliwal v. D. M. Muzaffarnagar*,³ *Dr. B. N. Sarin v. State of U. P.*⁴

Knowledge of meeting—Service of notice cannot be dispensed with—Even if a member can be said to have had information thereby of the meeting of the Board, that is not the method contemplated by this section and it cannot be said that notice of the meeting was served, or can be deemed to have been served upon him. And even if he can be fastened with knowledge of the meeting, he was under no obligation to take any notice of the meeting (Corpus Juris Secundum: *ibid*) There was no obligation to attend a meeting which was not duly constituted, vide *V. N. Tripathi v. State of U. P.*¹

Provisions of the Section—Directory or Mandatory—In the unreported case of *Tara Chand Modi v. District Magistrate*⁵, it was held that some of the directions contained in the analogous clause of section 87-A of the municipalities Act are important and their compliance cannot be dispensed with and are mandatory while other directions relate to details only and are directory. In

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1. 1968 A.W.R. 114 (115).
 2. 1968 A.W.R. 114 (115).
 3. 1968 A.L.J. 704.
 4. 1967 A.L.J. 681.
 5. Second Appeal No. 313 of 1956, decided on 22nd January, 1957 by the Allahabad High Court.

the case of *Chhotey Lal v. D. M., Meerut*¹, it was held that although notice of meeting was not sent to the member's residence, but he had received it and so there was no substantial non-compliance with the law.

In *Sharafatullah Khan v. State of U. P.*², a Division Bench held that the procedure laid down was not mandatory in the sense that even though there had been substantial compliance, non-observance thereof in the strict language of law rendered the proceedings illegal or ineffective.

Accordingly the provision which casts duties which the D. M. should himself perform and relate to matters on which he himself has to take decisions, are mandatory and not directory and if those duties are not performed and those decisions are not taken by him but are performed and taken by another authority, there is a clear contravention of section 87-A (3), vide *Kishore Goswamy v. District Magistrate*³.

Acts cannot be delegated by the Commissioner.—There should, however, be substantial compliance with the law in which event non-observance of details or procedure could be ignored. As observed in *K. C. Gupta v. Prayag Narayan*⁴, there are certain duties cast by the Section on the Commissioner (as are cast in the analogous provisions on the District Magistrate) which he has to perform himself, and he cannot surrender them to another officer and performance of those duties by such other officers cannot be regarded as substantial compliance with the provisions of this section, e.g., the decision as to date and time of meeting should be taken by the D. M., vide *Kishore Goswamy v. District Magistrate*⁵. It was further held in that case that since the notice of the meeting in that case was not issued pursuant to the decision as to date and time taken by the D. M. himself as contemplated by section 87-A (3) of the Municipalities Act but by Officer-in-charge Local Bodies, the notice ought to be regarded as invalid and, it follows, the proceedings of the meeting held pursuant to the invalid notice are also invalid.

Quorum.—The quorum is referred to in sub-section (16) of this section 16 of the Adhiniyam but no number has been mentioned therein as has been provided in the analogous section 87-A in its sub-clause (13) of the Municipalities Act by using the words "which shall not be less than one half of the total number of members of the Board for the time being", but in its natural context the quorum in this Adhiniyam should mean a bare majority of the members constituting the Mahapalika. In this context a reference may be made to the Full Bench case of *M. P. Jaiswal v. D. M.*⁶ which prescribes law on the analogous section wherein different provision in this respect has been laid down.

Within three days—Sub-clause (17) (a)—Meaning.—The date of receipt of the communication has to be excluded, vide *R. G. Gupta v. State of U. P.*⁷.

Representation to the State Government—To be sent through whom.—See for detailed discussion *R. K. Verma v. State of U. P.*⁸ and a different view in *R. G. Gupta v. State of U. P.*⁷ both in respect of analogous provisions in section 87-A Municipalities Act.

1. Second Appeal No. 17 of 1957, decided on 25th January, 1957 by the Allahabad High Court.
2. 1962 A. L. J. 930.
3. 1970 A. L. J. 978 (982).
4. 1961 A. L. J. 226.
5. 1970 A. L. J. 978 (982).
6. 1970 A. L. J. 1122 (1128) (F. B.).
7. 1969 A. L. J. 231 (D. B.).
8. 1966 A. L. J. 1091.

17. Nagar Pramukh to be member.—(1) A Nagar Pramukh if not otherwise a member of the Mahapalika shall be *ex officio* member thereof.

(2) A Nagar Pramukh shall have only a casting vote in the event of equality of votes when presiding at meetings of the Mahapalika or any committee thereof and not vote as a member.

18. Allowance of Nagar Pramukh.—¹[The Nagar Pramukh and the Upa Nagar Pramukh may be given such allowances or facilities as the Mahapalika may, with the previous approval of the State Government, fix.]

19. Resignation of Nagar Pramukh and Upa Nagar Pramukh.—(1) A Nagar Pramukh wishing to resign his office may do so by writing under his hand addressed to the State Government and it shall take effect from the date of the information to the Mukhya Nagar Adhikari that it has been accepted by the State Government.

(2) An Upa Nagar Pramukh may at any time resign his office by writing under his hand addressed to the Nagar Pramukh and it shall take effect as soon as it is received by the Nagar Pramukh.

Comments

Analogous Law.—Section 49 of the Municipalities Act.

Resignation—When becomes effective—(i) *Nagar Pramukh*—His resignation becomes effective, contrary to that of the Upa Nagar Pramukh, only on the information to the Mukhya Nagar Adhikari of the resignation having been accepted by the State Government.

(ii) *Upa Nagar Pramukh.*—There is no condition prescribed for the resignation on the happening of which condition it has to become effective. As soon as a resignation addressed to and is received by the Nagar Pramukh, it becomes effective.

Nagar Pramukh—Can withdraw resignation before information of its acceptance by State Government is conveyed to the Mukhya Nagar Adhikari.—There is no provision in this respect in this Adhiniyam but a similar provision is contained in section 8-A(5) where a Full Bench in *Bahori Lal v. District Magistrate, Bulandshahar*² considered this aspect. Reliance was placed on the Supreme Court case *Jai Ram v. Union of India*³ and the earlier Allahabad view in *Jwala Prasad v. State of U. P.*⁴ was dissented and after summarising the English Law as well it was held that a President had a right to withdraw his resignation and he having done so there can no resignation be left which could be accepted by the District Magistrate. Even the purported acceptance, if any, of the resignation, was a nullity and so would be its communication. There can, therefore, be no vacancy in the office of the President and no election for the seat of the President can be held and if it is held it would be void.

1. Subs. by U. P. Act No. XXI of 1964.

2. A.I.R. 1956 Alld. 511 (512, 514) (F. B.)

3. A.I.R. 1954 S.C. 584.

4. A.I.R. 1954 Alld. 638.

Members of Mahapalika

20. Qualifications for election as Vishishta Sadasya.—A person shall not be qualified to be chosen to fill a seat as a Vishishta Sadasya unless he—

- (a) is an elector in the City, and
- (b) is not less than 30 years of age.

21. Election of Vishishta Sadasya.—(1) The election of Vishishta Sadasya shall be held according to the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) An outgoing Vishishta Sadasya shall be eligible for re election.

22. Casual vacancy in the office of Vishishta Sadasya.—Where, before the expiration of the term of office of a Vishishta Sadasya his seat becomes vacant owing to death, resignation, removal, avoidance of election or any other cause, a Vishishta Sadasya shall be elected, as soon as may be, after the occurrence of the vacancy in the same manner, as far as may be, but subject to any other provisions of the Act in that behalf, as is provided for the election of Vishishta Sadasya at a general election by and under this Act :

Provided that where the term of office of the outgoing Vishishta Sadasya would, in the ordinary course expire within four months of the occurrence of the vacancy, the vacancy shall be left unfilled unless the Mahapalika resolves otherwise.

23. Resignation of Vishishta Sadasya.—A Vishishta Sadasya may at any time resign his office by writing under his hand addressed to the Nagar Pramukh. The resignation shall take effect upon the receipt of the same by the Nagar Pramukh.

24. Qualifications for election as Sabhasad.—A person shall not be qualified to be chosen to fill a seat as a Sabhasad unless he—

- (a) is an elector in the city, and
- (b) is in the case of a seat reserved for Scheduled Castes, a member of any of those castes.

25. Disqualifications for Vishishta Sadasya and Sabhasad.—(1) A person shall, notwithstanding that he is otherwise qualified, be disqualified for being chosen as, and for being, a Vishishta Sadasya or a Sabhasad, if he—

- 1[(a) whether before or after the commencement of this Act has been convicted by a court in India of any offence and sentenced to imprisonment for not less than two years, unless a period of five years or such less period as the State Government may allow in any particular case, has elapsed since his release];
- (b) is an undischarged insolvent ;
- (c) holds any place of profit in the gift or disposal of the Mahapalika ;
- (d) is in the service of a State Government or the Central Government or any local authority or is a District Government Counsel

or an Additional or Assistant District Government Counsel or an Honorary Magistrate or an Honorary Munsif or an Honorary Assistant Collector ;

- (e) has whether by himself or by any person in trust for him or for his benefit or to his account, any share or interest in a contract for supply of goods to, or for the execution of any works or the performance of any services undertaken by the Mahapalika ;
- (f) is in arrears in excess of one year's demand, of any tax payable to the Mahapalika, to which Section 504 applies or of any charges for water supplied by the Mahapalika ;
- (g) having held any office under the Government of India or the Government of any State he has been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal ;
- (h) is debarred from practising as a legal practitioner by order of any competent authority ;
- (i) is disqualified under Section 80 or 83 of this Act from being a member of a Mahapalika ;
- (j) is suffering from leprosy or is suffering from any of the infectious diseases to be specified by the State Government by order and has been declared by a medical officer not below the rank of a Civil Surgeon to be incurable of such disease :

Provided that in the case of sub-clause (f), the disqualification shall cease as soon as the arrears are paid :

Provided further that arrears of any tax or water charges due to the Municipal Board or any other local authority exercising jurisdiction within the area which has since been declared a City shall for the purposes of clause (f) be deemed to be arrears of tax or water charges payable to the Mahapalika.

(2) A person who is already a Sabhasad or a Vishishta Sadasya shall be disqualified respectively for election as Vishishta Sadasya or Sabhasad except at a general election to reconstitute the Mahapalika.

(3) A person who has been defeated at the polls at any election to a seat of Sabhasad shall be disqualified for election as Vishishta Sadasya for a period of six months from the date of declaration of the result of that election.

(4) Having been elected as a Vishishta Sadasya or a Sabhasad a person shall be disqualified for continuing as a Vishishta Sadasya or a Sabhasad if he—

- (i) is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner or with which he is engaged in a professional capacity in connexion with any cause or proceeding in which the Mahapalika or the Mukhya Nagar Adhikari is interested or concerned, or
- (ii) absents himself for six consecutive months from the meetings of the Mahapalika, except on account of illness or any other cause accepted by the Mahapalika.

(5) A person shall not be deemed to have incurred any disqualification under clause (c) of the sub-section (1) by reason only of his receiving—

(i) any pension,

(ii) any allowance or facility for serving as the Nagar Pramukh or Upa Nagar Pramukh or as a Sabhasad or Vishishta Sadasya.

(6) A person shall not be deemed to have incurred disqualification under clause (c) of sub-section (1) by reason merely of his having any share or interest in—

(i) any joint stock company or any society registered or deemed to be registered under the Co-operative Societies Act, 1912, which shall contract with or be employed by the Mukhya Nagar Adhikari on behalf of the Mahapalika ;

(ii) the occasional sale to the Mukhya Nagar Adhikari on behalf of the Mahapalika of any article in which he regularly trades to a value not exceeding in the aggregate in any one calendar year to two thousand rupees.

(7) Any person who, after being elected as Vishishta Sadasya or Sabhasad, becomes disqualified under this section shall not remain a Vishishta Sadasya or Sabhasad, as the case may be, and his seat shall become vacant.

Comments

Analogous law.—Section 13-D and Section 40 of the U. P. Municipalities Act.

Scope.—See *Mahendra Prakash v. Commissioner, Meerut Division*¹, in this respect as well.

Disqualifications.—Disqualifications for election are enumerated in sub-sections (1) to (3) of this Section while those for discontinuing as a Sabhasad or Vishisht Sabhasad are given in sub-section (4) thereof.

Ceases to be a member.—Under the Municipalities Act, a person once elected, though he had incurred a disqualification, after being elected or was disqualified even since before election does not cease to be a member thereafter but continues as such till the expiry of the term of the Board unless he has been removed by the State Government, for those disqualifications, under Sections 38 and 48, vide *Bhagwandas Burnwal v. State of U. P.*², because there does not appear to be any provision in that Act to the effect that as soon as a member incurs a disqualifications he automatically ceases to be a member of the Mahapalika. The same view was also taken by the same Lordship in the case of *Madan Mohan Lal v. Om Prakash*³.

In order to over-come this difficulty, it appears that sub-section (7) of this Section under this Mahapalika Adhiniyam has been enacted wherein it has been provided that on incurring such disqualification, one shall not remain a member and his seat shall become vacant. It is, however, doubtful, that happening of a disqualification whether automatically operates as a cessation of the membership without being so declared by the State Government under Sections 82 and 83.

1. 1970 A. W. R. 408.

2. A. I. R. 1957 Alld. 375 (377).

3. A. I. R. 1957 Alld. 384 (388).

"Held any office under the Government of India"—Sub-section (1) (g)—*Employees of the Life Insurance Corporation—Whether Central Government's employees—No*—41—though much powers have been given to the Central Government with regard to the constitution, formation and the control of the Corporation, nonetheless the Corporation is a distinct legal entity created by the statute and has a perpetual succession with a right to hold and acquire property and it cannot be said to be either the employee or a department of the Central Government, and employees of the Corporation cannot be said to be in the service of the Central Government, vide *Madan Mohan Lal v. Om Prakash*¹.

"Person in arrears of Mahapalika Tax"—Sub-section (1) (f).—Liability of payment of arrears of Mahapalika Tax is on the person seeking election for being a Sabhasad or Vishishta Sabhasad in his individual capacity as well in his representative capacities, e.g., manager of a deity if tax is due against the such deity. There is no distinction in between any such capacities, vide *Collector of Jalaua v. Bamwari Lal*².

"For being chosen"—Words in sub-section (1)—*Whether relates to the date of nomination or any other date.*—"Election" is a continuous process consisting of several stages and embracing many steps of which nomination is one; nomination is the foundation of a candidate's right to go to the polls and must be treated as an integral part of the election. The starting point of the act of choosing is not on the date of the poll only. The process of choosing commences on the date of filing nominations. So if a person is disqualified on the date of nomination, he cannot be chosen as a candidate because the disqualification mentioned in this Section attaches to him on that date, vide *Mangoo Singh v. Election Tribunal Bareilly*³, while dealing a case under the analogous section 13-D of the Municipalities Act. Reliance was placed on *N. P. Ponnuswami v. Returning Officer*⁴.

Wiping of the disqualification—Not retrospective.—The Supreme Court in the case of *Mangoo Singh v. Election Tribunal, Bareilly*³, has held under the analogous provisions in Section 13-D of the Municipalities Act that the wiping off of the disqualification has no retrospective effect, and the disqualification which subsisted on the day of filing nominations does not cease to subsist on that day. Consequently where a person is disqualified on the date of nomination by reason of being in arrears of taxes cannot get that disqualification removed by payment of that arrears of taxes on any later date.

Arrears of tax to which Section 504 applies—Whether presentation of any bill demanding such taxes is essential—No—It may be readily conceded that the word 'demand' ordinarily means something more than what is due; it means something which has been demanded, called for or asked for. But the meaning of a word must take colour from the context in which it is used. In clause (f) the context in which the word 'demand' is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends; therefore, the expression used is—'arrears in the payment of municipal tax or other dues in excess of one year's demand.' The word 'demand' in that context and in the collocation of words in which it has been used can only mean 'in excess of one year's Mahapalika tax or other dues.' When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a

1. A. I. R. 1957 Alld. 384 (388).
2. 1956 A. L. J. 328 (D. B.).
3. 1958 A. L. J. 155 (158) (S. C.).
4. A. I. R. (1952) S. C. R. 218.

word is capable of, according to lexicographers. It is sufficient for our purpose to state that even in standard dictionaries and law lexicons, it is well recognised that the word 'demand' may mean simply a 'claim' or 'due', without importing any further meaning of calling upon the person liable to pay the claim or due, vide *Mangoo Singh v. Election Tribunal, Bareilly*.¹

"Six consecutive months"—Starting point of time—Sub-section (4) (ii).—These words occur also in the analogous provision contained in sub-section (1) (a) of section 40 of the Municipalities Act. Where the last meeting of the Board was held on 30th October, 1965, it was held that the calendar month commenced on 30th October, 1965 and ended on 29th November, 1965. Then they followed the next calendar month commencing 30th November, 1965 and ending 29th December, 1965. Finally the third calendar month commenced on 30th December, 1965 and ended on 29th January, 1966. This view is supported by *South British Fire and Marine Insurance Co., New Zealand v. Braja Nath Shaha*². The question in that case was whether a suit instituted on 15th April, 1907 claiming a sum of money under an insurance policy because of a fire occurring in the night of 14/15th October, 1906 was within limitation, when the period of limitation was six months as specified in the insurance policy. A Full Bench of the Calcutta High Court, which decided that case held that the suit was not brought within that period. Maclean, C. J., held that the word "month" in the clause must mean calendar month and that if it be taken as it appeared from the evidence that the fire occurred before the midnight of 14th October, 1906, the suit was not instituted until 15th April, 1907, one day after the expiration of six months it is apparent that the computation can be explained only on the basis that excluding the day on which the fire occurred, the first calendar month commenced from 15th October, 1906 and the period of six months expired therefore on 14th April, 1907, vide *Abdul Latif v. Commissioner, Gorakhpur*³.

26. Term of office of Sabhasad and Vishishta Sadasya.—(1) The term of a Sabhasad or Vishishta Sadasya other than Sabhasad or Vishishta Sadasya chosen to fill a casual vacancy shall be co-terminus with the term of the Mahapalika.

(2) The term of a Sabhasad or Vishishta Sadasya chosen to fill a casual vacancy shall be the remainder of his predecessor's term.

27. Election of Sabhasads.—(1) The Sabhasads shall be elected on the basis of adult suffrage in accordance with the provisions of this Act and the rules framed thereunder.

(2) An outgoing Sabhasad shall be eligible for re-election.

28. Casual vacancy in the office of Sabhasad.—Where before the expiration of the term of office of a Sabhasad his seat becomes vacant owing to death or resignation or any other cause a Sabhasad shall be elected as soon as may be after the occurrence of the vacancy in the same manner as far as may be, but subject to any other provisions of the Act in that behalf, as is provided for the election of Sabhasads at a general election by and under this Act :

Provided that where the term of an outgoing Sabhasad would in the ordinary course expire within four months of the occurrence of the vacancy, the vacancy shall be left unfilled unless the Mahapalika resolves otherwise.

1. 1958 A. L. J. 155 (160) (S. C.).

2. 1909) I. L. R. 36 Cal. 516 (535) (F. B.).

3. A. I. R. 1968 All. 44 (47) (D. B.).

29. Resignation of Sabhasads.—A Sabhasad may at any time resign his office by writing under his hand addressed to the Nagar Pramukh and his resignation shall take effect upon the receipt of the same by the Nagar Pramukh.

30. Election of same person for more than one ward.—(1) If any person has been elected a Sabhasad from more than one ward, he shall within three days of the date of the last of such election intimate the Mukhya Nagar Adhikari the ward for which he chooses to serve.

(2) In default of such intimation, the Mukhya Nagar Adhikari shall determine by lot and notify the ward for which such person shall serve.

(3) The said person shall be deemed to have been elected only for the ward so chosen or notified and the vacancy or vacancies arising in the representation of the other ward or wards shall be filled by fresh election as if they were casual vacancies.

¹[**30-A Conveyance allowance or facilities for members.**—The Sabhasads and Vishishta Sadasyas may be paid such conveyance allowance, or be given such facilities in lieu of conveyance allowance, for attendance at meetings of the Mahapalika and its committees, as may be provided by rules.]

Delimitation of Wards

31. Provision of wards.—(1) For the purpose of the election of Sabhasads every City shall be divided into wards in the manner provided in Section 32 and there shall be a separate electoral roll for each ward.

(2) The representation of each ward shall be on the basis of population of that ward ²[as ascertained at the last preceding census of which the relevant figures have been published or as determined in the manner provided in sub-section (3)] and shall as far as possible be in the same proportion as the whole number of Sabhasads fixed under Section 6 bears to the total population of the City.

¹(3) Where, in the opinion of the State Government, the population of any area in a City to be comprised in a ward cannot readily be ascertained from the census figures mentioned in sub-section (1), the State Government may, by notification in the official *Gazette*, direct that such population shall be determined by multiplying the number of voters entered in the Assembly rolls relatable to that area by the total population of the area comprised in the City as ascertained at such census and then dividing the product by the total number of voters entered in the Assembly rolls relatable to the area comprised in the City.

Explanation—In this sub-section 'Assembly rolls' means the Assembly rolls in force on such date as may be specified in the notification.

32. Delimitation Order.—(1) The State Government shall, by order, determine—

(a) the number of wards into which a City shall be divided for purposes of election of the Sabhasads ;

(b) the extent of each ward ;

(c) the number of [seat or seats]² allotted to each ward ; and

1. *Ins.* by U. P. Act XXI of 1964.

2. *Subs.* by U. P. Act XXI of 1964.

¹[(d) whether the seat, or any of the seats allotted to a ward is reserved for the Schedule Castes.]

(2) The draft of the Order under sub-section (1) shall be published in the official *Gazette* for objections for a period of not less than fifteen days.

(3) The State Government shall consider any objection filed under sub-section (2) and the draft Order shall, if necessary, be amended, altered or modified accordingly and thereupon it shall become final.

Comments

Wards—Delimitation

| City | No. of wards | Single or Double member ward. |
|-----------|--------------|--------------------------------|
| Kanpur | 36 | Double |
| Agra | 27 | Double |
| Varanasi | 27 | Double |
| Allahabad | 27 | Double |
| Lucknow | 32 | 31 Wards Double 1 ward single. |

The above determination has been laid down by the State Government in an order known as the Delimitation order².

33. Alteration or amendment of Delimitation Order and its effect.—(1) The State Government may, by a subsequent Order, alter or amend any final Order under sub-section (3) of Section 32.

(2) Upon alteration or amendment of any final Order under this section the State Government shall apportion the existing Sabhasads to the altered or amended wards so as to provide so far as is reasonably practicable for their continuing to represent as large a number as possible of their former constituents.

(3) An existing Sabhasad shall hold his office in the ward to which he is assigned for the same period that he would have held it had the wards remained unaltered and unamended.

Electors and Electoral Rolls

34. Nirvachak Registrikaran Adhikari (Electoral Registration Officer).—There shall be a Nirvachak Registrikaran Adhikari (Electoral Registration Officer) for each ward who shall be such officer of the State Government or a local authority as the State Government may designate or nominate in this behalf.

1. Ins. by U. P. Act XXI of 1964.

2. Notification No. M-151/XI-A 31-3-59 dated 20-4-1951, Published in the U. P. *Gazette*, Extraordinary, dated 20th April, 1959.

35. Electoral Roll for each ward.—There shall be an electoral roll for each ward which shall be prepared by the Nirvachak Registrikaran Adhikari. (Electoral Registration Officer) under the supervision of the Nirvachan Sanchalak (Sthaniya Nikaya) in accordance with the provisions of this Act.

36 Qualifications of electors.—Subject to the provisions of Section 37, every person who is qualified to be registered in the Assembly Rolls relating to the area comprised in the ward or whose name is entered therein shall be so entitled to be registered in the electoral roll of the ward.

Comments

Qualified to be registered in the Assembly Rolls—In this respect the material provision is contained in the Art. 326 of the Indian Constitution which runs as under :—

Art. 326—Election to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage ; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Also see *Section 19 of the Representation of the People Act, 1950* which runs as under :—

Conditions of registration :—

Subject to the foregoing provisions of this Part, every person who—

- (a) is not less than 21 years of age on the qualifying date, and
- (b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency.

37. Disqualifications for electors.—(1) A person shall be disqualified for registration in electoral roll if he is disqualified for registration in the Assembly Rolls or is disqualified for voting under the provisions of this Act.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll of the ward in which it is included :

Provided that the name of any person struck off the electoral roll of a ward by reason of disqualification under sub-section (1) shall forthwith be re-instated in that roll if such disqualification is, during the period such roll is in force, removed under the provisions of this Act or under any other law authorizing such removal.

Comments

Disqualified for registration in the Assembly Rolls—Reference to *Section 16 of the Representation of the People Act, 1950* which is very material in this respect need be perused. It is reproduced as under :

Disqualifications for registration in an electoral roll—(1) A person shall be disqualified for registration in an electoral roll if he—

- (a) is not a citizen of India ; or
- (b) is of unsound mind and stands so declared by a competent court ; or
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included :

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be re-instated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorizing such removal.

Also see *Section 141 of the Representation of the People Act, 1950*, which is as follows :—

Disqualification arising out of conviction and corrupt practices.—If any person after the commencement of this Act—

- (a) is convicted of an offence punishable with imprisonment under section 171E or section 171F of the Indian Penal Code, or of an offence punishable under Section 125 or section 1357 or clause (a) of sub-section (2) of section 136 of this Act, or
- (b) is, upon the trial of an election petition under Part VI, found guilty of any corrupt practice, he shall, for a period of six years from the date of the conviction or from the date on which such finding takes effect, be disqualified for voting at any election.

38. Registration to be in one ward and in one place.—(1) No person shall be entitled to be registered in the electoral roll for more than one ward in the same City.

(2) No person shall be entitled to be registered in the electoral roll for any ward more than once.

39. Preparation of electoral rolls.—(1) The Nirvachak Registrakaran Adhikari (Electoral Registration Officer) shall, for purposes of preparation of electoral roll for the ward, adopt the Assembly Rolls relating to the area comprised in the said ward and publish the same in the manner prescribed under Section 41, and upon its publication it shall, subject to any alteration, addition or modification made under or in accordance with this Act, be the electoral roll for the ward prepared in accordance with this Act.

(2) Where any addition, omission, alteration or other amendment is made under the Representation of the People Act, 1950, or the rules framed thereunder, in the Assembly Rolls relating to the area of the ward, a similar amendment shall, as soon as may be, be made in the corresponding electoral roll of the ward.

40. Annual revision of electoral rolls.—The electoral roll for each ward shall be revised every year in accordance with the provisions of this Act.

41. Other matters relating to electors and electoral rolls.—The State Government may, by Order make provisions in respect of the following matters concerning the electoral rolls, namely—

- (a) the date on which the electoral rolls first prepared and subsequently prepared under this Act shall come into force and their period of operation ;
- (b) the correction of any existing entry in the electoral rolls on the application of the elector concerned ;
- (c) the correction of clerical or printing errors in the electoral rolls ;
- (d) correction of electoral rolls in case of large omissions of names therefrom in respect of any area ;
- (e) the inclusion in the electoral rolls of the name of any person—
 - (i) whose name is included in the Assembly Rolls for the area relatable to the ward but is not included in the electoral roll of the ward or whose name has been wrongly included in the electoral roll of some other ward, or
 - (ii) whose name is not included in the Assembly Rolls and who is otherwise qualified to be registered in the electoral roll of the ward.
- (f) exclusion of the names of persons who are disqualified for registration ;
- (g) the maintenance of the record of persons disqualified for voting ;
- (h) fees payable on application for inclusion and exclusion of names ;
- (i) annual revision of the electoral rolls ;
- (j) custody and preservation of the electoral rolls ; and
- (k) generally for all matters relating to the preparation and publication of the electoral rolls.

Voting

42. Right of vote.—(1) No person who is not, and, except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any ward shall be entitled to vote in that ward.

(2) No person shall vote at any election in any ward if he is subject to any of the disqualification referred to in Section 37.

(3) No person shall vote at a general election in more than one ward of a Mahapalika and if a person votes in more than one such ward, his votes in all such wards shall be void.

(4) No person shall at any election vote in the same ward more than once, notwithstanding that his name may have been registered in the elec-

toral roll for that ward more than once, and if he does so vote, all his votes in that ward shall be void.

(5) No person shall vote at any election if he is confined in a person whether under a sentence of imprisonment or transportation or otherwise or is in the lawful custody of the police :

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

43. Method of voting.—(1) In plural member wards every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate.

(2) If any elector gives more than one vote to any one candidate in contravention of the provisions of sub-section (1) then at the time of counting of votes not more than one of the votes given by him to such candidate shall be taken into account and all other votes given by him to such candidate shall be rejected as void.

44. Manner of voting.—At every election in a ward where a poll is taken votes shall be given by secret ballot and no vote shall be received by proxy.

Conduct of Election

45. Supervision of conduct of elections.—The Nirvachan Sanchalak (Sthaniya Nikaya) shall directly supervise the conduct of elections of the Nagar Pramukh, the Vishishta Sadasya and of Sabhasads of the Mahapalika.

46. Order regarding conduct of elections.—In so far as provision with respect to any matter is not made by this Act, the State Government may, by order, provide for matters concerning conduct of elections to the offices of Nagar Pramukh and Upa Nagar Pramukh and to the seats of Vishishta Sadasyas and Sabhasads, that is to say—

- (a) issue of notifications for elections and notices of elections ;
- (b) the appointment, powers and duties of Nirvachan Adhikaris (Returning Officer), Sahayak Nirvachan Adhikaris (Assistant Returning Officers), Nirvachan Adhyakshas (Presiding Officers) and Matdan Adhikaris (Polling Officers) and clerks ;
- (c) appointment of dates for nomination, scrutiny, withdrawal and polling ;
- (d) the manner of presentation and the requirements for valid nomination, scrutiny of nominations and withdrawal of candidatures ;
- (e) appointment and duties of election agents, polling agents and counting agents ;
- (f) procedure at general elections including death of candidate before poll, procedure in contested and uncontested elections ; special procedure at elections in wards where seats are reserved for Scheduled Castes ;
- (g) identification of voters ;
- (h) hours of polling ;
- (i) adjournment of poll and fresh poll ;

- (j) manner of voting at elections ;
- (k) scrutiny and counting of votes including recount of votes and procedure to be followed in case of equality of votes and declaration of results ;
- (l) the notification of the names of the persons elected as Sabhasads or Vishishta Sadasyas, Nagar Pramukh and Upa Nagar Pramukh ;
- (m) refund and forfeiture of deposits ;
- (n) manner in which votes are to be given by Nirvachan Adhyaksha (Presiding Officer), polling agent or any other person who being an elector for a ward is appointed for duty at a polling station at which he is not entitled to vote ;
- (o) the procedure to be followed in respect of the tender of vote by person representing himself to be an elector after another person has voted as such elector ;
- (p) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers ;
- (q) bye-elections to fill casual vacancies ;
- (r) issue of copies of election papers and fixing of charges for such copies ;
- (s) maintaining of list of Sabhasads and Vishishta Sadasyas for the purposes of elections of Vishishta Sadasya and Nagar Pramukh and Upa Nagar Pramukh ; and
- (t) generally on all matters relating to conduct of elections.

Comments

Orders.—For orders see the orders given at the end of this Book.

Ballot paper—Mark of vote was required to be made opposite the name of candidate.—But elector placed the mark on the back of the Ballot paper—In the peculiar circumstances of that case the mark was held to be a mark “on the ballot paper” within the meaning of paras 43 and 64 of the U. P. Municipalities (Conduct of Elections of Members) Order, 1953, vide *Swarup Singh v. Election Tribunal, M. B. Aligarh*¹, *Ram Saran Saxena v. Binda Prasad*². The latter is a case confirming the same under Rule 24 (2) of the U. P. Municipalities (Conduct of Election of President and Election Petitions) order, 1955.

47. Failure of elections.—(1) If at any election of Sabhasads or Vishishta Sadasyas any seat remains unfilled, a fresh election shall be held to fill the vacancy.

(2) For the purposes of conduct of election and ascertainment of the term of a Sabhasad or Vishishta Sadasya an election under sub-section (1) shall be deemed to be an election to fill a casual vacancy.

48. Electoral offences.—(1) The provisions of Sections 126, 127, 128, 129, 130, 131, 132, 134, 135 and 136 of Chapter III of Part VII of the Representation of the People Act, 1951, shall have effect as if—

1. 1959 A. L. J. 607 (608).
2. 1959 A. L. J. 4 (6) (D. B.).

- (a) the reference therein to an election were a reference to an election held under this Act ;
- (b) for the ward "constituency" the word "ward" had been *substituted* ; and
- (c) in Sections 134 and 136 for the words "by or under this Act or under the Representation of the People Act, 1950 (XLIII of 1950)", the words "by or under the U. P. Nagar Mahapalika Adhiniyam, 1959" had been *substituted*.

(2) If the Nirvachan Sanchalak (Sthaniya Nikaya) has reason to believe that any offence punishable under Sections 129 or 134 or under clause (a) of sub-section (2) of Section 136 of the said chapter has been committed in reference to any election to a Mahapalika he may cause such enquiries to be made and such prosecutions to be instituted as the circumstances of the case to him may appear to require.

(3) No court shall take cognizance of any offence punishable under Section 129 or under Section 134 or under clause (a) of sub-section (2) of Section 136 unless there is a complaint made by order of or under authority from the Nirvachan Sanchalak (Sthaniya Nikaya).

Comments

See Section 126 of the Representation of the People Act and other relevant Sections which run as under :

Section 126 of the Prohibition of public meetings on the election day.—(1) No person shall convene, hold or attend any public meeting within any polling area within twenty four hours before the date of commencement of the poll or on the date or dates on which a poll is taken for an election in that polling area.

(2) Any person who contravenes, the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

Section 127 of the Representation of the People Act—Disturbances at election meetings.—(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with fine which may extend to two hundred and fifty rupees.

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

Section 127-A of the Representation of the People Act—Restrictions on the printing of pamphlets, posters, etc.—(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the name and address of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate ; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer together with one copy of the document,—

(i) where it is printed in the capital of the State, to the Chief Electoral Officer ; and

(ii) in any other case, to the District Magistrate of the district in which it is printed.

(3) For the purpose of this section,—

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression 'printer' shall be construed accordingly ; and

(b) 'election pamphlet or poster' means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Section 128 of the Representation of the People Act.—Maintenance of secrecy of voting—(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Section 129 of the Representation of the People Act.—Officers, etc., at elections not to act for candidates or to influence voting.—(1) No person who is a returning officer, or an assistant returning officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the returning officer or the presiding officer to perform any duty in connection with an election shall in the conduct or the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid, and no member of a police force, shall endeavour—

- (a) to persuade any person to give his vote at an election ; or
- (b) to dissuade any person from giving his vote at an election ; or
- (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment which may extend to six months or with fine or with both.

Section 130 of the Representation of the People Act.—Prohibition of canvassing in or near polling stations.—(1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely :—

- (a) canvassing for votes ; or
- (b) soliciting the vote of any elector ; or
- (c) persuading any elector not to vote for any particular candidate ; or
- (d) persuading any elector not to vote at the election ; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this section shall be cognizable.

Section 131 of the Representation of the People Act.—Penalty for disorderly conduct in or near polling stations.—(1) No person shall, on the date or dates on which a poll is taken at any polling station,—

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as megaphone or a loudspeaker ; or
- (b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

Section 132 of the Representation of the People Act.—Penalty for misconduct at the polling station.—(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

Section 134 of the Representation of the People Act.—Breaches of official duty in connection with elections.—(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The person to whom this section applies are the returning officers, assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election ; and the expression "official duty" shall for the purpose of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

Section 135 of the Representation of the People Act.—Removal of ballot papers from polling station to be an offence.—(1) Any person who at any election fraudulently takes, or attempts to take a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer :

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

Section 136 of the Representation of the People Act.—Other offences and penalties therefor.—(1) A person shall be guilty of an electoral offence if at any election he—

- (a) fraudulently defaces or fraudulently destroys any nomination paper ; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer ; or
- (c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot ; or
- (d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper ; or
- (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in ; or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election ; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an electoral offence under this section shall—

- (a) if he is a returning officer or an assistant returning officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both ;
- (b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

49. Bar of jurisdiction of courts.—No Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Nirvachan Adhikari (Returning Officer) or by any other person appointed under this Act in connexion with an election.

Comments

Bar.—This Section places bar on jurisdiction of the Civil courts only. Like other Acts, the words "in any court" or "No court" have not used. It means the jurisdiction of the Criminal courts, High Court, etc., has not been challenged and these courts can very well adjudicate upon the validity, legality etc., of the orders passed by the officers appointed in connection with elections.

Civil court's jurisdiction—Barred—Extent—See commentary on Section 226 in this Book.

50. Notification of election and of vacancy.—Every election of Nagar Pramukh, Upa Nagar Pramukh, Vishishta Sadasya or Sabhasad and every vacancy in the office of Nagar Pramukh, Upa Nagar Pramukh, Vishishta Sadasya or Sabhasad shall be notified in the official *Gazette* in the manner prescribed.

Executive Committee

51. Constitution and term of Executive Committee.—(1) The Executive Committee shall consist of—

(a) the Upa Nagar Pramukh, who shall be *ex officio* Chairman of the Executive Committee ; and

(b) twelve persons to be elected by the Mahapalika out of Sabhasads and Vishishta Sadasyas.

(2) The Executive Committee shall at its first meeting and, as often thereafter as may be necessary on account of a vacancy in the office of Vice-Chairman, elect one of its members to be its Vice-Chairman.

(3) A Vice-Chairman shall cease to hold office as soon as he ceases to be a member of the Executive Committee.

(4) The persons referred to in clause (b) of sub-section (1) shall be elected by the Mahapalika at its first meeting after general elections.

(5) One-half of the members of the Executive Committee shall retire every succeeding year at noon on the first day of the month in which the first meeting of the Mahapalika mentioned in sub-section (4) was held :

Provided that all the members of the Executive Committee in office when general elections are held shall retire from office on the election of a new Committee under sub-section (4).

(6) The members who shall retire under sub-section (5) one year after their election under sub-section (4) shall be selected by lot at such time previous to the date for retirement specified in sub-section (5) and in such manner as the Chairman of the Executive Committee may determine, and in succeeding years the members who shall retire under this section shall be those who have been longest in office :

Provided that, in the case of a member who has been re-appointed, the term of his office for the purposes of this sub-section shall be computed from the date of his re-appointment.

(7) The Mahapalika shall at its meeting held in the month preceding the date of retirement specified in sub-section (5) appoint fresh members of the Executive Committee to fill the offices of those who are due to retire on the said date.

(8) A casual vacancy in the seat of a member of the Committee shall be filled by electing a member for the remainder of the term of the member out-gone :

Provided that where the remainder of the term of the Committee is less than two months, the vacancy shall not be filled unless the Mahapalika resolves otherwise.

(9) A retiring member shall be eligible for re-election.

52. **Election of members of Executive Committee.**—The election of members of the Executive Committee and of the Vice-Chairman thereof shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

53. **Resignation of members of Executive Committee.**—A member of the Executive Committee wishing to resign his office may do so in writing under his hand addressed to the Nagar Pramukh and it shall take effect from the moment of its receipt by the Nagar Pramukh.

Development Committee

54. **Constitution and term of Development Committee.**—(1) The Development Committee shall consist of—

- (a) the Upa Nagar Pramukh who shall be its *ex officio* Chairman ;
- (b) ten persons to be elected by the Mahapalika out of Sabhasads and Vishishta Sadasyas ; and
- (c) two persons to be co-opted by the members referred to in clauses (a) and (b) from among persons who in the opinion of the said members have experience of municipal administration of matters pertaining to development, improvement or planning.

(2) The Development Committee shall at its first meeting and so often thereafter as may be necessary on account of a vacancy in the office of Vice-Chairman elect one of its elected members to be its Vice-Chairman.

(3) A Vice-Chairman shall cease to hold office as soon as he ceases to be a member.

(4) A co-opted member shall have the right to speak in and otherwise to take part in the proceedings of the Development Committee or of any sub-committee thereof which he may be a member but shall not by virtue of this sub-section be entitled to vote.

(5) The term of a co-opted member shall be one year.

(6) The persons referred to in clause (b) of sub-section (1) shall be elected by the Mahapalika at its first meeting after general elections.

(7) One-half of the members of the Development Committee shall retire every succeeding year at noon on the first day of the month in which the first meeting of the Mahapalika mentioned in sub-section (6) was held :

Provided that all the members of the Development Committee in office when general elections are held shall retire from office on the election of a new Committee under sub-section (6).

(8) The members who shall retire under sub-section (7) one year after their elections under sub-section (3) shall be selected by lot at such time

previous to the date for retirement specified in sub-section (7) and in such manner as the Chairman of the Development Committee may determine, and in succeeding years the members who shall retire under this section shall be those who have been longest in office :

Provided that, in the case of a member who has been reappointed, the term of his office for the purposes of this sub-section shall be computed from the date of his reappointment.

(9) The Mahapalika shall at its meeting held in the month preceding the date of retirement specified in sub-section (7) appoint fresh members of the Development Committee to fill the offices of those who are due to retire on the said date.

(10) A casual vacancy in the seat of a member of the Committee shall be filled for the remainder of the term of the member outgone :

Provided that if the remainder of the term is less than two months, the vacancy shall not be filled unless the Mahapalika resolves otherwise.

(11) A retiring member whether elected or co-opted shall be eligible for re-election or re-co-option.

55. Election of members of Development Committee.—The election of members of the Development Committee and its Vice-Chairman shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

56. Resignation of members of Development Committee.—A member of the Development Committee wishing to resign his office may forward a written resignation signed by him to the Nagar Pramukh and his resignation shall take effect upon the receipt of such writing by the Nagar Pramukh.

Committees under clause (e) of Section 5

57. Constitution of Committees under clause (e) of Section 5.—(1) A committee constituted under clause (e) of Section 5 shall consist of as many members not exceeding twelve as the Mahapalika may determine.

(2) Subject to the directions, if any, of the State Government in this behalf, the members of a committee referred to in sub-section (1) shall elect from among themselves a Chairman and a Vice-Chairman and shall fill any casual vacancy in the office of Chairman or Vice-Chairman by fresh election.

(3) The provisions relating to the term and manner of election of members of Executive Committee shall, as far as may be, apply to a committee constituted under clause (e) of Section 5.

Mukhya Nagar Adhikari

58. Appointment of the Mukhya Nagar Adhikari.—(1) The Mukhya Nagar Adhikari shall be appointed by the State Government :

Provided that no person not already in the service of the Government may be appointed Mukhya Nagar Adhikari unless his appointment has been approved by the State Public Service Commission.

(2) The Mukhya Nagar Adhikari shall, in the first instance, hold office for such period not exceeding three years as the State Government may fix and his appointment may be renewed from time to time for a period not exceeding three years at a time.

(3) Notwithstanding anything contained in sub-section (2) if at a meeting of the Mahapalika not less than 5/8th of the total number of members vote in favour of a resolution recommending the withdrawal of the Mukhya Nagar Adhikari from the service of the Mahapalika, the State Government shall, if the Mukhya Nagar Adhikari is an officer of Government recall him, or if he is not such officer, either terminate his services or offer him any other appointment for which he may be considered fit.

59. Salary and allowances, etc., of Mukhya Nagar Adhikari.—(1) The Mukhya Nagar Adhikari shall receive from the Mahapalika Fund such monthly salary and allowances, as the State Government may from time to time determine.

(2) The other terms of employment including leave, pension, contribution to Provident Fund, shall be such as the State Government may prescribe.

Disputes relating to Elections

60. Election valid unless questioned, etc.—No election under this Act shall be called in question except as provided by or under this Act.

Comments

Analogous Law —Section 13-K(2) of the Municipalities Act.

Bar to challenge election or to seek injunction in respect thereof—No suit would lie in a Civil court for a declaration that the result of a Municipal election has been wrongly declared and that the plaintiff is the person entitled to be declared elected. It follows that no injunction can be issued against the Board for the same purpose, vide the Full Bench case of *Abdur Rahman v. Abdur Rahman*¹ which was followed in the Division Bench case of *Naval Kishore Agrawal v. Municipal Board, Gorakhpur*².

Also see notes under section 62.

61. Questioning of election of Nagar Pramukh or Upa Nagar Pramukh.—(1) The election of a person as Nagar Pramukh or Upa Nagar Pramukh may be questioned by any unsuccessful candidate or by any person whose nomination paper was rejected or by any member of the Mahapalika by presenting a petition to the District Judge exercising jurisdiction in the City on any one or more of the grounds mentioned in Section 71.

(2) The petition shall be presented within seven days of the declaration of the result of election.

62. Questioning of election of Vishishta Sadasya or Sabhasad.—(1) The election of any person as Vishishta Sadasya or Sabhasad may be questioned by any unsuccessful candidate at the election or by any person whose nomination paper was rejected at the election, or, in the case only of election of any person as Vishishta Sadasya by any Sabhasad

1. I.L.R. 47 Alld. 513 (F.B.)

2. 1937 A.L.J. 336 (D.B.) : A.I.R. 1937 Alld. 765.

and in the case of election as Sabhasad by any elector of the ward concerned.

(2) The petition may be presented on any one or more of the grounds mentioned in Section 71.

(3) The election of any person as Vishishta Sadasya or Sabhasad shall not be questioned on the ground that the name of any person qualified to vote, has been omitted from, or the name of any person not qualified to vote, has been inserted in the electoral roll or rolls.

(4) The petition shall be presented to the District Judge, exercising jurisdiction in the City within 15 or 30 days of the declaration of result of the election according as the election questioned is to the seat of Vishishta Sadasya or Sabhasad.

Comments

Analogous Law.—Section 25 of the U. P. Municipalities Act.

Refund of security forfeited to Board—(because he had not secured requisite number of votes)—*Suit for—Whether barred—Yes*—See *Nawal Kishore Agrawal v. Municipal Board, Gorakhpur*¹.

Challenging election—Omission or mistake in preparing electoral roll—Suit for—Whether barred—Yes—See *Nawal Kishore Agrawal v. Municipal Board, Gorakhpur*¹.

63. Forms and contents of petition.—(1) An election petition shall specify the ground or grounds on which the election of respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies, and shall set forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

(2) The petition and if there is any schedule or annexure to the petition, such schedule or annexure also, shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(3) A petitioner shall join as respondent to his petition—

(a) where the petitioner claims a declaration under [***]² Section 64, all the contesting candidates, other than the petitioner, and in any other case all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Comments

Analogous law.—Section 20 of the U. P. Municipalities Act.

Printing mistake.—In this section there appears a printing mistake to the effect that the words "Clause (b) of appearing in sub-clause 3 (a) of this section are, incorrect as there is no such Sub-clause appended with Section 64 in this Act.

1. 1937 A.L.J. 336 (D.B.) : A.I.R. 1937 Alld. 765

2. Omit. by S. 8 of U.P. Act XXI of 1964.

Court fee—Election petition—Article 22 of Schedule II of the U.P. Court Fees Act, 1870, provides that the election petition questioning the election of any person :

- (a) As a member of a local board other than a notified or town area Committee. ... Rs. 125-00
- (b) as a member of a notified or town area Committee ... Rs. 15-00

Nagar Pramukh—Court Fee—The above provisions of the court fees Act, would not be applicable to a petition challenging the election of a Nagar Pramukh although by virtue of Section 17 of this Act he is deemed as *ex-officio* member in case he was elected directly and not from among the members of the Mahapalika and it cannot be said that such petition is to challenge the election of a member but it is in fact a challenge to the election of a person as the President or Nagar Pramukh, vide *Ganpat Sahai v. Rama Shanker*.¹ On the same reasoning, it can be said that petition to challenge the election of a Upa Nagar Pramukh is also not governed by the said provision of the Court Fee Act.

No estoppel if demanded court fee is paid.—If on demand an alleged deficit of court fee is made good by a candidate, it cannot be said that the said candidate later on as a respondent is estopped from contending that the petition originally (before payment of the alleged deficit) was affixed with sufficient court fee, vide *Ganpat Sahai v. Rama Shanker*.¹

Limitation.—It is prescribed in section 62 (4) of this Adhiniyam :
15 days from the date of declaration of result—Vishishta Sadasya.
30 days from the date of declaration of result—Sabhasad.

Parties to the petition.

- (a) Relief for declaring void election of a returned candidate. All the returned candidates
- (b) Further relief to declare petitioner duly elected. And also all the contesting candidates i.e., unsuccessful candidates, vide *F. A. Khan v. Member of Election Tribunal*²

64. Relief that may be claimed by the petitioner.—A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

65. Recrimination.—(1) Where in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election :

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within 21 days of the service upon him of notice of³ the election petition in case the election questioned is as Vishishta Sadasya or Sabhasad and three days in all other cases given a notice to the District Judge trying the election petition of his

1. A.I.R. 1957 Alld. 729 (731) (D.B.)
2. 1968 A.L.J. 70.

intention to do so and has also given the security, if any, prescribed under Section 79.

(2) Every notice referred to in sub-section (1) shall be accompanied by the specification, statement and particulars required by Section 63 in the case of an election petition and shall be signed and verified in like manner.

66. Petition when to be dismissed.—If an election petition has not been presented within the time allowed by this Act or it does not comply with any provisions made under Section 79 relating to deposit of security or the necessary court-fee payable thereon is not furnished within the time allowed therefor it shall forthwith be rejected by the District Judge.

67. Procedure of hearing of petition.—(1) An election petition not rejected under Section 66 shall be heard by the District Judge.

(2) The District Judge hearing the petition shall follow such procedure as may be prescribed by rules under Section 79.

Comments

Prescribed by Rules—Rules named as the U. P. Nagar Mahapalika Nirvahan Yachikaon ki Niyamawali, 1959 have been framed by the State Government. See at the end of this Book.

68. Transfer of petition.—(1) On the application of any party to an election petition and after notice to the other parties thereto and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(a) transfer an election petition pending before a District Judge for trial to any other District Judge ; or

(b) re-transfer the same for trial to the District Judge from whom it was withdrawn.

(2) Where any election petition has been transferred or re-transferred under sub-section (1), the District Judge who thereafter tries such petition may, subject to any direction in the order of transfer to the contrary, proceed from the point at which it was transferred or re-transferred:

Provided that he may, if he thinks fit, re-call and re-examine any of the witnesses already examined.

69. Decision on the petition.—If the petition has not otherwise been dismissed in the course of hearing, the District Judge shall at the conclusion of the trial of an election petition make an order

(a) dismissing the election petition ; or

(b) declaring the election of all or any of the returned candidates to be void ; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Comments

Analogous Law—Section 25 of the U. P. Municipalities Act.—

High Court's interference—Art. 226 Constitution—*Extent*—Section 25 of the

Municipalities Act was held to have given power to the tribunal to declare another candidate to have been duly elected if, in the particular circumstances of the case, it appears more appropriate to the tribunal. It cannot, therefore, be contended that the tribunal had no power in that case to grant a relief declaring the respondent as duly elected. Such an exercise of power can be interfered with by the High Court only if it came to the conclusion that in the exercise of the power the tribunal had travelled beyond the ambit of the Section or that it had been influenced by considerations which are extraneous to the provisions of that section. Whether the circumstances were sufficient for the tribunal to grant the relief or not is not a matter which can be examined by the High Court in the exercise of its power under Art. 226 of the Constitution. Now in order to overcome this difficulty in the exercise of the discretionary powers of the High Court in writ jurisdiction, this Nagar Mahapalika Adhiniyam has conferred appellate jurisdiction on the High Court under Section 74 of this Act.

Tribunal—Powers—See Head Note “High Court’s interference—Art. 226 Constitution—Extent” under this Section and the Head Note “Tribunal’s Power—Drawing of Lot” under Section 73 in this Adhiniyam.

70. Other orders to be made while disposing of the petition.—At the time of making an order under Section 69 the District Judge shall also make an order—

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, any candidate or his agent at the election, and the nature of that corrupt practice ; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice ; and
- (b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid:

Provided that no person shall be named in the order under sub-clause (ii) of clause (a) unless—

- (a) he has been given notice to appear before the District Judge and to show cause why he should not be so named ; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the District Judge and has given evidence against him, of calling evidence in his defence and of being heard.

71. Grounds for declaring an election to be void.—If the District Judge is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act ; or
- (b) that any corrupt practice specified in Section 78 has been committed by a returned candidate or his election agent or by any

other person with the consent of a returned candidate or his election agent ; or

- (c) that any nomination has been improperly rejected ; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder,

the District Judge shall declare the election of the returned candidate to be void.

Comments

Rejection of nomination paper.—There is a unanimity on the point that an improper rejection of a nomination paper raises a presumption that the result is materially affected, vide *Surendra Nath Khosla v. S. Dalip Singh*¹, *Vishwamitter v P. M. B. Amrodha*².

72. Grounds for which candidate other than the returned candidate may be declared elected.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the District Judge is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes ; or
- (b) that but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained a majority of the valid votes ;

the District Judge shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

73. Procedure in case of equality of votes.—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of these candidates to be declared elected, then—

- (a) any decision made by the Nirvachan Adhikari (Returning Officer) under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition ; and
- (b) in so far as that question is not determined by such a decision, the District Judge shall decide between them by lot and proceed as

1. A. I. R. 1957 S. C. 242.

2. 1968 A. L. J. 6 (10).

if the one on whom the lot then falls had received an additional vote.

Comments

Tribunal's power—Drawing of lot.—Earlier under the U. P. Municipalities Act, there was no such power with the Returning Officer or the Election Tribunal to decide as to which of the two candidates should be given an additional vote (in the event of equality of votes) by drawing a lot for determining whether the election of the candidate declared elected was valid or not but it was held in *T. Chand v. Election Tribunal*¹ that the Tribunal, being an appellate authority had co-extensive power with that of the Returning Officer who had the power to draw lot for declaring an election in midst of equality of votes. Similar provision was then enacted in Rule 48 of the U. P. Municipalities (Conduct of Elections of Presidents and Election Petitions) Order, 1955, in respect of election of the President and this Rule invested the Election Tribunal with the power of drawing a lot but in the aforesaid case¹ it was held that the Tribunal had such power in respect of other elections as well. In order to overcome this technical difficulty, it appears that the present section has been enacted. See also the case of *Ram Saran Saxena v. Binda Prasad*², which is a case under the aforesaid order of 1955 with the same view.

Drawing of lot—By a 4 year old girl (daughter of the Commissioner acting as the tribunal)—Whether valid Yes.—In the case of *T. Chand v. Election Tribunal*¹, in the absence of any prejudice to the petitioner, it was held that the drawing of lot might have been irregular but it was not illegal.

74. Appeal against order of District Judge.—(1) An appeal shall lie from every order made by the District Judge under Section 69 or Section 70 to the High Court within thirty days from the date of the order :

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

(2) Every person who prefers an appeal under sub-section (1) shall enclose with the memorandum of appeal a Government Treasury receipt showing that a deposit of five hundred rupees has been made by him either in a Government Treasury or in the State Bank of India in favour of the High Court as security costs of the appeal.

(3) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a Civil Court situated within the local limits of its civil appellate jurisdiction :

Provided that every appeal under this section shall be heard by a bench of not less than two judges.

(4) Every appeal shall be decided as expeditiously as possible and endeavour shall be made to determine it finally within three months from the date on which the memorandum of appeal is presented to the High Court.

(5) A copy of the order of the High Court on appeal shall be sent by the Registrar of the High Court to the State Government for information.

1. 1959 A. L. J. 203 (205) (D. B.)

2. 1959 A. L. J. 4 (6) (D. B.)

(6) Where an appeal has been preferred against an order under clause (b) of Section 69, the High Court may, on sufficient cause being shown, stay operation of the order appealed from and in such a case the order shall be deemed never to have taken effect under Section 77 and shall not take effect until the dismissal of the appeal.

75. Finality of orders and decision.—The decision of the High Court on appeal under Section 74 and subject only to such decision, the order of the District Judge under Section 69 or Section 70 shall be final and conclusive.

76. Communication order.—The District Judge shall after pronouncing his orders made under Sections 69 and 70 send a copy thereof to the State Government.

77. Taking effect of order.—An order of the District Judge under Section 69 or Section 70 shall take effect on the day next following the day on which the same is pronounced.

78. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :

(1) Bribery, that is to say, any gift, offer or promise by a candidate or his agent or by any other person, of any gratification to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw from being a candidate, or to retire from contest at an election :

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn his candidature, or for having retired from contest ; or

(ii) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right at an election :

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community ; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause ;

(b) a declaration of public policy, or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause ;

(3) The systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem for the furtherance of the prospects of that candidate's election.

(4) The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The procuring or abetting or attempting to procure by a candidate or his agent, the application by a person whether for a ballot paper in the name of any other person, whether living or dead or in a fictitious name, or by a person for a ballot paper in his own name when by reason of the fact that he has already voted in the same or some other ward, he is not entitled to vote.

(6) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person, for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under order issued in pursuance of Section 46 :

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power :

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or, by any other person, any assistance (other than the giving of vote), for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :

- (a) gazetted officers ;
- (b) stipendiary judges and magistrates ;
- (c) members of the armed forces of the Unions ;
- (d) members of the police forces ;
- (e) excise officers ;

(f) revenue officers including village accountants, such a *patwaris*, *lekhpals*, *talatis*, *karnams* and the like but excluding other village officers ; and

(g) such other class of persons in the service of the Government as may be prescribed.

Comments

Analogous law.—Section 28 of the U. P. Municipalities Act with overwhelming modifications therein.

Corrupt Practice.—Candidate announcing that on his being elected, the State Government would advance Rs. 5 lacs to the Municipality for improvement of electricity and water works Schemes. It was found to be propaganda totally unfounded, based on misrepresentation which was undoubtedly deliberate. It was held to be a corrupt practice under Section 28 of the Municipalities Act, vide *Ganpat Sahai v. Rama Shanker*¹.

Denial of use of corrupt practices.—*What amounts to.*—In *Ganpat Sahai's*¹ case the candidate had denied any such propaganda having been done by him or on his behalf. He had on the contrary asserted that he had contradicted that propaganda and was in a halting manner and there was no evidence that wide publicity was given to the contradiction. In the circumstances it was held that if a candidate is found to have made deliberate misrepresentation and if towards the close of the election campaign he even comes out with a vague contradiction, that by itself cannot be considered to be a sufficient denying circumstances.

Defences and Exceptions.—Where any circumstance is in the nature of an exception and it provides a limitation on the discretionary power of the court to grant a declaration in favour of the petitioner, it has to be pleaded and proved by the person concerned (i. e., the candidate) vide *Ganpat Sahai v. Rama Shanker*¹.

Denial of use of corrupt practice.—*State of such denial.*—It should be denied with very wide publicity in the midst of the very election. Where the corrupt practice had already taken place when the propaganda had been done extensively and towards the end even if it is contradicted, it cannot be said that by such late contradiction, the candidate took reasonable steps to prevent the Commission of the corrupt practice. It can also be not regarded as a corrupt practice of a trivial and limited nature, vide *Ganpat Sahai v. Rama Shanker*¹.

"Gives any place"—See *Mazharuddin v. Rama Shanker*².

"With a view to induce any voter to give or refrain from giving a vote"—See *Mazharuddin v. Rama Shanker*².

"Gauging on the ground of caste, community, sect or religion"—See *Mazharuddin v. Rama Shanker*².

Corrupt practice.—*What to be proved.*—The mere doing of an act which may be beneficial to a person or persons does not necessarily lead to the inference that there was a design to induce voters to vote for him. There must be some further circumstances placed before the Tribunal to prove corrupt practice as defined in section 28 Sub-clause (ii) besides merely proving the fact that

1. A. I. R. 1957 Alld. 729 (733) (D. B.).

2. A. I. R. 1956 Alld. 169.

something beneficial was done by the returned candidate, vide *Mazharuddin v. Rama Shanker*¹.

Bribery.—*Whether is a charitable gift.*—*Yes and No.*—When it is obvious that what are called charitable gifts may be nothing more than a specious and subtle form of bribery, a pretext adopted to veil the corrupt practice of gaining or securing the votes of the recipients. And if this is found to be an object of the donor, it matters not under what pretext, in what form, to what person, or through whose hands the gift may be bestowed or whether it has proved successful in gaining the desired object, or not.

On the other hand, a gift may purely be what it professes to be, the offspring of a purely benevolent impulse and if this be its character, it matters not whether the recipient makes a good or bad use of it, or what its effects may be upon him. A motive originally pure cannot become corrupt by reason of a misuse of what was intended to be a benefit. All we can say is that a charitable gift however injudicious it may be, is harmless in the eye of the law, whatever its effect may be upon the recipients and certainly, it is not bribery, vide the English case of *ply mouth*.²

From this remark it is clear that the charitable gifts by themselves in order to amount to corrupt practice must be proved to have been given with an express design of inducing the voters to vote for the person who gives that charity. The courts have to find as a fact that the charitable gift were made with the express design of corrupting the voters of inducing them to vote for the candidate and in order to come to such a conclusion mere evidence to prove the making of gift is not sufficient.

Some other additional circumstances have got to be proved from which such an inference can legitimately be drawn, vide *Mazharuddin v. Rama Shanker*¹

Voting by a person in his own name but in place of another.—*No false personation.*—*No corrupt practice.*—Where a candidate got others to vote for two named persons, namely an adult woman had represented herself to be Punni and had voted in place of Putti's son Muhmud Khan by saying that Putti was wrongly recorded in place of Punni and Muhmud Khan was wrongly recorded in place of Khurshed Khan without any reference to any consideration of age in the electoral roll. It was apparent that the voters who apparently voted had got their name entered surreptitiously in place of real voters already in existence on the roll by misrepresenting that those electors did not exist. The Election Tribunal held that this act amounted to corrupt practice as this amounted to cheating but the High Court did not hold it a corrupt practice.

Whether it amounted to an offence of cheating was not the question which the Tribunal had to consider. The Tribunal had only to consider whether the facts proved amounted to corrupt practice within the meaning of Section 28. Section 28 Sub-section (3) provides that a person shall be deemed to have committed corrupt practice who directly or indirectly, by himself or by any other person gives or procures the giving of a vote in the name of a voter who is not the person giving such vote.

If a person votes for himself, the fact that his name was brought in the voters list incorrectly or surreptitiously would not render his voting corrupt under section 28. The persons who actually voted in both these cases were persons whose names were either brought on the voter's list after corrections

1. A. I. R. 1956 All. 169 (171).

2. (1880) 3 O. M. and H. 107.

had been made or they, at any rate, went to the polling officer and pointed out to him that they were really the persons whose names had been entered in the voters list and they were entitled to vote. It cannot be said that they voted for persons other than themselves, and consequently on the finding of the Tribunal it self no corrupt practice was committed in the case of these two voters ; vide *Mazharuddin v. Rama Shanker*¹.

*Corrupt practice—Repairing and opening of a temple—No—*The mere grant of a permission to the Hindu Community to come and worship in a temple cannot amount to giving of a place and it cannot be said that a candidate could commit any corrupt practice by repairing a temple and allowing the Hindu public to worship in it. In order to bring such act within the scope of corrupt practice, the fact that the candidate did something which was in the interest of Hindu Public but it has to be further proved that such an act was done with a conscious design to induce the voters to give vote for him, vide *Mazharuddin v. Rama Shanker*¹.

79. Rules regarding decision of disputes relating to elections.—The State Government may make rules with respect to the following matters—

- (a) appointment and remuneration of staff for District Judges trying election petitions ;
- (b) abatement and withdrawal of election petitions ;
- (c) dismissal of elections petitions for non-appearance, non-prosecution or non-compliance with orders of court and with the provisions of the Act and orders made thereunder ;
- (d) procedure at hearing of election petitions ;
- (e) powers of District Judge trying election petitions ;
- (f) place of trial ;
- (g) deposit of security and additional security ;
- (h) refund and forfeiture of security deposits ;
- (i) recovery of costs awarded under Section 70 ;
- (j) substitution of parties ;
- (k) consignment and weeding out of records of decisions of election petitions ;
- (l) any other matter about which provision is necessary in the opinion of the State Government.

80. Disqualification for electoral offences and corrupt practices—
(1) Offences punishable with imprisonment under Section 171-E or Section 171-F of the Indian Penal Code, 1860, and offences punishable under Section 135 or Section 136 of the Representation of the People Act, 1951, as applied to elections under this Act by Section 48 shall entail disqualification for membership of a Mahapalika.

(2) The corrupt practices specified in Section 78 shall entail disqualification for membership of a Mahapalika.

(3) The period of disqualification shall be five years commencing in the

1. A. I. R. 1956 Alld. 169 (171).

case of disqualification under sub-section (1) from the date of the conviction for the offence and in the case of disqualification under sub-section (2) from the date on which the finding of the District Judge under Section 70 takes effect under Section 77.

Comments

The provisions of other enactments referred to in this Section are reproduced as under.

Section 171-E Penal Code is reproduced below :

Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

Explanation.—“Treating” means that form of bribery where the gratification consist in food, drink, entertainment, or provision.

Section 171-F Penal Code is reproduced below :

Punishment for undue influence or personation at an election.—Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 135 Representation of people Act.—Removal of ballot papers from polling station to be an offence.—Any person who at any election fraudulently takes, or attempts to take a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundreded rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer :

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

Section 136 Representation of the People Act.—Other offences and penalties therefor.
—(1) A person shall be guilty of an electoral offence if at any election he—

- (a) fraudulently defaces or fraudulently destroys any nomination paper ; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer ; or
- (c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot ; or

- (d) without due authority supplies any ballot paper to any person/or receives any ballot paper from any person or is in possession of any ballot paper ; or
 - (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in ; or
 - (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election ; or
 - (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.
- (2) Any person guilty of an electoral offence under this section shall—
- (a) if he is a returning officer or an assistant returning officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both ;
 - (b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot paper and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

Certain Other Matters

81. Penalty for sitting and voting before making oath or affirmation or when not qualified or disqualified.—If a person sits or votes as a Nagar Pramukh, Upa Nagar Pramukh or member of a Mahapalika at a meeting of the Mahapalika or any Committee thereof before he has complied with the requirements of sub-section (1) of Section 85 or when he knows that he is not qualified or that he is disqualified for being a Nagar Pramukh, Upa Nagar Pramukh, Vishishta Sadasya or Sabhasad as the case may be, he shall be liable in respect of each day on which he so sits or votes to a penalty of fifty rupees to be recovered as a debt due to the State.

82. Questions as to disqualifications to be determined by the State Government.—If any question arises as to whether a member of a Mahapalika has become subject to any of the disqualifications mentioned in Section 25 the question shall be referred in the manner prescribed for decision to the State Government and the decision of the State Government shall be final.

83. Removal of members.—(1) The State Government may removed a member of the Mahapalika or of any Committee thereof on any of the following grounds ;

- (a) that he has acted as a Vishishta Sadasya, Sabhasad or member of any Committee, as the case may be, by voting or taking part in the discussion of any matter other than a matter referred to in clause (e) of Section 25 in which he has directly or indirectly a

personal interest or in which he was professionally interested on behalf of a client, principal or other person ;

(b) that he has become physically or mentally incapacitated for performing his duties as such member ;

(c) that he has been guilty of gross misconduct in the discharge of his duty as such member ;

Provided that no order of removal shall be made by the State Government under this section unless a Vishishta Sadasya, Sabhasad or member of Committee to whom it relates has been given a reasonable opportunity of showing cause why such order should not be made.

(2) The removal shall be made by notification in the official *Gazette* and shall become effective from the date of publication of such notification.

(3) The State Government may direct a member who is suffering from any of the serious infectious diseases to be specified by the State Government, by order not to attend any meeting of the Mahapalika or any Committee, Joint Committee or sub-Committee thereof and any member who has been so directed shall not be qualified to attend any meeting of the Mahapalika or any Committee, Joint Committee or sub-committee thereof until upon his furnishing proof to the satisfaction of the State Government of his having been cured of the disease the State Government withdraw the direction.

(4) A person who has been removed from membership of the Mahapalika under sub-section (1) shall be disqualified for being elected and for being a member of the Mahapalika for a period of four years from the date of his removal, and a person who has been removed from the membership of any committee of the Mahapalika shall be disqualified for being elected or for being a member of such committee for a period of four years from the date of his removal :

Provided that the State Government may at any time by order remove the disqualification.

Comments

Analogous Law.—Almost to section 40 of the U. P. Municipalities Act. For Scope of this Section 40, see *H. S. Khewariya v. State of U. P.*¹

Removal from membership—Reasonable opportunity—Whether includes right of cross examining witnesses—Yes.—In the Municipalities Act, Section 40, sub-clause (4) such a member before removal is entitled to avail an "opportunity to explanation" which expression in the present Nagar Mahapalika Adhinyam has been replaced by the expression "reasonable opportunity of showing cause" in sub-clause (1) proviso. Under the former Act, it was held in *Mohar Singh v. President Notified Area Committee*² that when the Act provides an opportunity of giving explanation to the member it also implies that he should be permitted to examine the witnesses against him and if necessary to cross examine the witnesses and produce evidence in defence.

Reasonably opportunity of showing cause—Proviso to sub-section (1)—Proposed action be also specified in the notice to the member.—A similar provision is contained in sub-section (4) of section 40 of the Municipalities Act where the words used are "an opportunity of explanation shall be given to the member concerned" whereas in the present proviso the words employed are "a

1. 1968 A. L. J. 183.

2. 1956 A. L. J. 759 (760).

reasonable opportunity of showing cause why such order should not be made". In the provision under this Adhiniyam the showing of cause relates to the proposed "Order" whereas in the provisions in the Municipalities Act, the explanation has no bearing at all with the proposed "Order" or action. Still in the case of *Abdul Latif v. Commissioner, Gorakhpur*¹, a case under the Municipalities Act, the order of removal was held invalid because the notice requiring the member to submit his explanation did not specify the action which the Commissioner proposed to take against them in case it was found that they had absented themselves from the meeting of the Board. The two notices merely point out that they had absented themselves from certain meetings specified in the notice without obtaining sanction from the Board, and call upon them to enter their defence in reply to that charge. There is nothing in the notices to indicate what is the action proposed to be taken against them.

Section 40 (4) of the Municipalities Act requires that when the State Government or the Prescribed Authority proposes to take action, an opportunity of explanation shall be given to the member concerned. The action proposed may be one of removal or of suspension or of warning. It is against such action that the statute contemplates an opportunity of explanation, and at that stage it is open to the member concerned to explain why he cannot be found guilty of the charge of absence contemplated by Section 40 (1) (a) and also in the event of his being found guilty of the charge, why he should not be removed or suspended or even warned. That the Legislature intended an opportunity of "explanation" to include both these opportunities of meeting the charge and of questioning the proposed measure of punishment, is apparent if reference be had to Section 48 which provides for removal of the President. Sub-section (2) requires that the President must be allowed to show cause against his removal, and sub-section (2-A) contemplates an "explanation" by the President by way of showing such cause. Provisions analogous to Section 40 (4) will be found in Sections 30 and 35. In such cases the order of removal would be void as well, vide *Ridge v. Baldwin*², *A. C. C. Ltd. v. P. N. Sharma*³.

Service of such notice - Whether discretion about a particular mode of service can be delegated—Doubted.—Although the mode of service of such notice on the members concerned is not provided in this Adhiniyam but in absence of any particular provision the mode provided under Section 554 (analogous to section 303 of the Municipalities Act) whether can be applied is doubtful as made in *Abdul Latif v. Commissioner, Gorakhpur*¹ and it was also doubted that in case, the authority who has to take action, i.e., the State Government under this Adhiniyam, can delegate its discretion of selecting the mode of service to any one else.

Recording of reasons—Not made mandatory.—Recording of reasons in respect of removal of President by the State Government under Section 48 (2-A) is mandatory vide *A. P. Chaturvedi v. State of U.P.*⁴, but no such provision exists in this Adhiniyam.

Diseases Specified.—See Appendix.

84. Suspension of Mahapalika authority.—(1) If at any time the State Government is satisfied that a situation has arisen in which any

1. A. I. R. 1968 All. 44 (47) (D. B.).

2. 1964 A. C. 40.

3. A. I. R. 1965 S. C. 1595.

4. 1968 A. L. J. 78

Mahapalika authority cannot function or refuses to function in accordance with the provisions of this Act it may by notification in the official *Gazette* declare that the functions of such Mahapalika authority shall in whole or to such extent as may be specified in the notification be exercised by such officer or authority as may be named in the notification and any such notification may contain incidental and consequential provisions as may appear to the State Government necessary or desirable for giving effect to the objects of the declaration.

(2) A declaration under this section shall be laid, as soon as may be, before each House of the Uttar Pradesh Legislature and it shall unless it is revoked earlier, cease to operate at the expiration of three months.

Comments

Analogous Law.—So far as the removal of the Nagar Pramukh is concerned it is similar to sub-section (2) (a) of section 48 of the U. P. Municipalities Act and in respect of suspension of the Mahapalika it corresponds to section 30 thereof.

No reasonable opportunity.—It appears that this is a residuary power with the State Government in respect of Nagar Pramukh and Upa Nagar Pramukh who are not included in the previous section 83 but in this respect no opportunity to show cause has been provided to them before their removal as provision has been made for members, etc. This section as such appears discriminatory and against constitution.

Period of suspension—Cannot be extended.—There does not appear any such provision for extension of the period of suspension of a Mahapalika in this Adhiniyam although such power vests in the State Government in case of a Municipal Board in view of the Explanation to section 30 of the Municipalities Act.

Recording of reasons—Not made mandatory.—See this Headnote under section 83 in this Book.

85. Oath of allegiance to be taken by the Nagar Pramukh and members.—¹[(1) Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected a Sabhasad or a Vishishta Sadasya or co-opted as a member of the Development Committee and every person who is elected a Nagar Pramukh shall before taking his seat make an oath or affirmation in the following form, namely :

| | | |
|-------------------------------|-----------------------------|--|
| | Sabhasad | |
| | Vishishta Sadasya | |
| | Nagar Pramukh | |
| "I, A.B., having been elected | do swear in the name of God | Co-opted member of the Development Committee |

of this Mahapalika do swear in the name of God that I will bear true faith,
solemnly affirm

and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.]

², (1-A) Within seven days of the constitution under Section 9 or reconstitution under Section 538 or Section 539 of the Mahapalika the Mukhya Nagar Adhikari shall convene a meeting of the Nagar Pramukh, Sabhasads and Vishishta Sadasyas who have been declared elected. The Commissioner of the Division and in his absence the District Magistrate

1. Subs. by U. P. Act XXI of 1964.

2. Ins. by U. P. Act XXI of 1964.

shall administer the oath or affirmation to the Nagar Pramukh and thereafter the Nagar Pramukh shall administer the oath or affirmation to such Sabhasads and Vishishta Sadasyas as may be present.]

(2) Any person who having been elected a Sabhasad or Nagar Pramukh or elected a Vishishta Sadasya or co-opted a member of the Development Committee fails to make within three months of the date on which his term of office commences or at one of the first three meetings of the Mahapalika held after the said date, whichever is later, the oath or affirmation laid down in and required to be taken by sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) Any person required under sub-section (1) to make an oath or affirmation shall not take his seat at a meeting of the Mahapalika, in the case of a person co-opted a member of the Development Committee at a meeting of such Committee, or do any act as Sabhasad, Vishishta Sadasya or Nagar Pramukh or such member of the Development Committee as the case may be, unless he has made an oath or affirmation as laid down in sub-section (1).

Comments

Analogous Law.—Section 42-D of the U. P. Municipalities Act.

Becoming member—When effective—Whether effective after taking oath—No.—In the case of *Ganesh Prasad v. District Magistrate*¹, it was held that taking of oath is not necessary for becoming a member as a person becomes a member on the date upon which he is declared to be elected although he may not be entitled to take his seat for the first time as a member until he has taken the prescribed oath. But in the present Nagar Mahapalika Act, sub-section (3) section 85, the words used are "shall not take his seat" or "do any act as Sabhasad" which mean he will not be entitled even to act as a member until oath is taken.

Suspension—Term of the Mahapalika must not have expired.—As held in *State of U. P. v. Municipal Board*², there can be no supersession after the term of an elected Mahapalika has expired. (This was so held in a case under section 30 of the Municipalities Act).

Bye-election after Constitution of Mahapalika member elected.—No provision for administration of oath to him. See *Vishwamitter v. P. M. B., Amroha*³, a case on the analogous provision of section 43-D of Municipalities Act.

86. Expenses of election.—(1) All expenditure incurred in connexion with the preparation and revision of electoral rolls for a City and the conduct of all elections under this Act in respect of that City shall except as otherwise directed by the State Government be charged to and be realizable from the Mahapalika to the extent and in the manner laid down by the State Government.

(2) The Nirvachan Adhikari (Returning Officer) or any officer charged with the duty of conducting any election may require the Mahapalika to advance such sum as may be necessary for the conduct of that election and the Mahapalika shall thereupon make that sum available to the Nirvachan Adhikari (Returning Officer) or other officer concerned.

1. 1956 A. L. J. 58.

2. 1970 A. L. J. 964 (966) (D. B.).

3. 1968 A. L. J. 6.

87. Power to make rules—(1) The State Government may make rules in respect of matters to be prescribed but which are not prescribed in the Act or by order.

(2) Without prejudice to the generality of the foregoing power such rules may provide for—

- (a) the manner of notification of election of Nagar Pramukh, Upa Nagar Pramukh, Vishishta Sadasya or Sabhasad, and of a vacancy in the office of Nagar Pramukh, Upa Nagar Pramukh, Vishishta Sadasya or Sabhasad ;
- (b) manner of election of members of Executive Committee Development Committee and committees constituted under clause (e) of Section 5 and of co-option of members of the Development Committee ;
- (c) manner of election of Vice-Chairman of the Executive Committee and Development Committee and Chairman and Vice-Chairman of committees constituted under clause (e) of Section 5 ;
- (d) maximum salary and allowances of Mukhya Nagar Adhikari ;
- (e) manner of reference under Section 82 of any question as to disqualification of member ;
- (f) procedure for ascertaining if a member is suffering from a serious infectious disease for the purposes of Sections 25 and 83 ; and
- (g) matters relating to taking of oath under Section 85.

Comments

Rules framed under this Section.—The State Government has framed rules called “holding of meetings and conduct of business Rules, 1960”, providing the following :

- (a) Time and place of meetings.
- (b) Arrangement of Business and list of Business.
- (c) Questions and matters and manner in respect thereof.
- (d) General rules of procedure.
- (e) Committees—Procedure and conduct.
- (f) Sub-committees.

Rules framed by the Municipal Board.—Such rule have no statutory force and can be changed from time to time, vide *Shankar Lal Dhanra v. Bal Kishan*¹.

CHAPTER III

Proceedings of the Mahapalika, Executive Committee, Development Committee and other Committees

88. Meeting of Mahapalika.—(1) The Mahapalika shall meet for the transaction of business six times at least in every year and more than two

months shall not intervene between its last sitting and the date appointed for the first sitting of the next meeting.

(2) The Nagar Pramukh and in the absence of the Nagar Pramukh the Upa Nagar Pramukh may, whenever he thinks fit, and shall, upon a requisition made in writing by not less than one-sixth of the total number of members of the Mahapalika call a meeting of the Mahapalika. The requisition may be delivered to the Nagar Pramukh or, as the case may be, to the Upa Nagar Pramukh by any member subscribing the same, or sent to him by registered post. ¹[The meeting on such requisition shall be convened within fifteen days from the date of delivery or service thereof].

¹[(2-A) Notwithstanding anything contained in sub-section (2), where a meeting has already been called to be held within a period of fifteen days from the date of delivery or service of a requisition, the Nagar Pramukh or Upa Nagar Pramukh, as the case may be, may, instead of calling a separate meeting upon that requisition, include, subject to the provisions of sub-section (1) of Section 91, the matters mentioned in such requisition in the list of business to be transacted at the meeting already called and thereupon such meeting shall be deemed to be a meeting convened on that requisition as well.

(2-B) The Nagar Pramukh or the Upa Nagar Pramukh, as the case may be, may, for reasons to be recorded, postpone a meeting, other than a meeting convened on requisition of members, by giving such notice as may be provided by bye-laws in this behalf.]

(3) Every meeting of the Mahapalika shall be open to the public unless the Presiding Officer considers that the public be excluded during the whole or any part of the meeting.

89. Meetings of Executive Committee, etc.—(1) The Executive Committee, the Development Committee and any other Committee constituted under Section 5 shall meet once at least in every month for the transaction of business.

(2) The Chairman or in the absence of the Chairman the Vice-Chairman of any Committee referred to in sub-section (1) may, whenever he thinks fit, and shall, upon a requisition made in writing by not less than one-fourth of the total number of members of the Committee, call a meeting of the Committee.

90. Quorum.—(1) Where any business is required to be transacted by special resolution, the quorum for the transaction of such business shall be at least one-half of members of the Mahapalika or the Committee as the case may be.

(2) No business shall, except as provided in sub-section (3) be transacted at any meeting of the Mahapalika, the Executive Committee, the Development Committee or any other Committee constituted under Section 5 unless at least one-fifth of the total number of member thereof be present throughout the meeting.

(3) Where any meeting fails or is unable to continue to transact its business for want of quorum, the Presiding Officer of the meeting shall direct that a meeting be held at such time and place as he thinks fit and thereupon the Mukhya Nagar Adhikari shall give notice to all members of the time and place of such meeting and the business which had been listed for transaction at the original meeting may be brought forward and transacted in the usual manner at such meeting but no quorum shall be necessary thereat.

91. Notice of meeting and business.—(1) A list of the business to be transacted at every meeting, except an adjourned meeting, shall be sent to the address, given by himself, of each member of the Mahapalika, the Executive Committee, the Development Committee, or other Committee constituted under clause (e) of Section 5. as the case may be, at least ninety-six hours in the case of a meeting of the Mahapalika and seventy-two hours in the case of a meeting of any such Committee before the time fixed for such meeting and no business, except as provided in sub-section (2), shall be brought or transacted at any meeting other than a business of which notice has been given :

Provided that if the list of business aforesaid is sent by post it shall be sent under a certificate of posting.

(2) Any member of the Mahapalika or of a Committee referred to in sub-section (1), as the case may be, may send or deliver to the Mukhya Nagar Adhikari notice of any resolution with a copy thereof proposed to be moved by him at any meeting of which notice has been sent under sub-section (1). The notice shall be sent or delivered at least forty-eight hours in the case of a meeting of the Mahapalika and twenty-four hours in the case of a meeting of any committee before the date fixed for the meeting and thereupon the Mukhya Nagar Adhikari shall with all possible despatch cause to be circulated such resolution to every member in such manner as he may think fit. Any resolution so circulated may, unless the meeting otherwise decides, be considered and disposed of thereat.

92. Vote of majority decisive at meetings of the Mahapalika.—

(1) All matters required to be decided by the Mahapalika or by any Committee thereof shall, save as otherwise provided in this Act, be determined by a majority of the members present and voting at the meeting.

(2) The voting at all meetings shall be by show of hands but the bye-laws to be framed by the Mahapalika may provide that any question or class of questions as may be specified, be decided by secret ballot.

(3) At any meeting, unless a poll be demanded by at least one-fourth of the members present, a declaration by the Presiding Officer at such meeting that the resolution has been carried or lost and an entry to that effect in the minutes of the proceedings shall, for the purposes of this Act, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(4) If a poll be demanded by at least one-fourth of the members present at a meeting, the votes of all the members present who desire to vote shall be taken under the direction of the Presiding Officer of the meeting and the result of such poll shall be deemed to be the resolution of the Mahapalika at such meeting.

93. Adjournment of meeting of Mahapalika and Committee, etc.

—The Presiding Officer of any meeting of the Mahapalika or of any Committee referred to in Section 89 at which a quorum of the members is present may, with the consent of the majority of the members present, adjourn the meeting from time to time.

94. Presiding Officers at meetings.—(1) The Nagar Pramukh and in his absence the Upa Nagar Pramukh shall preside at meetings of the Mahapalika.

(2) In the absence of the Chairman of any Committee the Vice-Chairman thereof shall preside at meetings of the Committee.

(3) The members present at any meeting shall, in the absence of the Nagar Pramukh and the Upa Nagar Pramukh in the case of the Mahapalika and the Chairman or Vice-Chairman, in the case of any Committee referred to in Section 89, choose one of their member to preside at the meeting.

(4) Subject to the provisions of Section 17 a person presiding at a meeting of the Mahapalika or of any Committee may vote on any motion before the Mahapalika or the Committee, as the case may be, and in the case of equality of votes shall have also a casting vote.

Comments

Meetings—Who is to preside—In the Municipalities Act there is no such clarification as to who shall preside the meetings although provision for holding meetings is given in section 86 thereof. In the case of *Bishan Chandra v. District Magistrate, Shahjahanpur*¹, this question was raised as to whether the President as of right should preside over all the meetings and it was held that by virtue of section 86 thereof it was the President who has to preside over the meetings. However, in order to resolve that uncertainty the present section 94 has been enacted to make it clear that the Nagar Pramukh and in his absence the Upa Nagar Pramukh shall preside at the meetings of the Mahapalika.

95. Special Committees and Joint Committees.—(1) The Mahapalika may from time to time by special resolution constitute a Special Committee consisting of such members and other persons, if any, as it may think fit, to enquire into and report upon any matter connected with its powers, duties or functions. Every member of a Special Committee shall have the right to speak in and otherwise to take part in the proceedings of the Committee, but no member who is not a member of the Mahapalika shall have a right to vote at any meeting of the Committee.

(2) The Mahapalika may from time to time by resolution appoint a Joint Committee of any two or more of the committees mentioned in Section 5 in respect of matters in which such committees may be jointly interested.

(3) Every Special Committee and Joint Committee shall conform to any instructions that may from time to time be given to it by the Mahapalika.

(4) The Mahapalika may at any time dissolve or alter the constitution of any Special Committee or Joint Committee or may at any time withdraw from any Special Committee any of the powers, duties and functions delegated to it.

(5) Every Special Committee and Joint Committee shall appoint one of their member to be the Chairman, provided that no member of the Mahapalika may be the Chairman of more than one Special Committee or Joint Committee and no person who is not a member of the Mahapalika shall be appointed Chairman of any committee.

(6) In the absence of a Chairman at any meeting the members of a Special Committee or Joint Committee shall choose one of their member to preside at the meeting, provided that no person who is not a member of the Mahapalika shall be so chosen.

(7) The report of any Special Committee shall, as soon as may be practicable, be laid before the Mahapalika which may thereupon take such action as it thinks fit or may refer back the matter to the Special Committee for such further investigation and report as it may direct.

96. Joint transaction with other local authorities.—(1) The Mahapalika may from time to time and shall, if so required by the State Government, join with a Cantonment authority or any other local authority or with a combination of such authorities—

- (a) in appointing a joint committee out of their respective bodies for any purpose in which they are jointly interested, and in appointing a Chairman of such committee ;
- (b) in delegating to any such committee power to frame terms binding on each such body as to the construction and future maintenance of any joint work and any power which might be exercised by any of such bodies, and
- (c) in framing and modifying bye-laws for regulating the proceedings of any such committee in respect of the purpose for which the committee is appointed.

(2) Where the Mahapalika has requested the concurrence of any other local authority under the provisions of sub-section (1) in respect of any matter and such other local authority has refused to concur, the State Government may pass such orders as it deems fit requiring the concurrence of such other authority, not being a Cantonment authority, in the matter aforesaid and such other authority shall comply with such orders.

(3) If any difference of opinion arises between the Mahapalika and any such other local authority which has joined the Mahapalika under this section, the matter shall be referred to State Government whose decision thereon shall be final and binding :

Provided that, if the authority concerned is a Cantonment authority, any such decision shall not be binding unless it is confirmed by the Central Government.

(4) The Mahapalika may from time to time enter into an agreement with a Cantonment authority, or a local authority or with a combination of such authorities for the levy of octroi or terminal tax or tolls by the Mahapalika on behalf of the authorities so agreeing and, in that event, the provisions of this Act shall apply in respect of such levy as if the area of the City were extended so as to include the area or areas subject to the control of such authority or such combination of authorities.

(5) The terms on which the Mahapalika proposes to join with a Cantonment authority or a local authority or a combination of such authorities under sub-section (1) or sub-section (4) shall be reduced to writing and be subject to prior approval of the State Government.

(6) Subject to the prior approval of the State Government the terms referred to in sub-section (5) may be varied or rescinded with the concurrence of all the local authorities concerned and any such variation or rescission shall take effect from such date as may be agreed upon and specified by the said local authorities.

97. Sub-committees.—(1) The Executive Committee, the Development Committee, or any Committee appointed under clause (e) of Section 5 or a Joint Committee may appoint one or more sub-committees for any purpose with which it is entitled to deal and which, in its opinion, can be more usefully carried out by a sub committee.

(2) A sub-committee appointed under sub-section (1) shall possess such powers and perform such duties and functions as the committee appointing it may from time to time delegate or confer.

98. Right to ask questions.—A Sabhasad or a Vishishta Sadasya may, subject to the conditions prescribed by rules, ask questions on any matter relating to the administration of this Act or the Municipal Government of the City.

99. Attendance of Chairman of a Committee at meetings of other committees.—With the permission of the Nagar Pramukh the Chairman of any Committee of the Mahapalika may be present at and address a meeting of any other Committee of the Mahapalika but he shall not, by virtue of this section, be entitled to vote thereat.

100. Vacancy in the offices of both Nagar Pramukh and Upa Nagar Pramukh.—Whenever the office of the Nagar Pramukh as well as of the Upa Nagar Pramukh is vacant, the Mukhya Nagar Adhikari shall, subject to any directions which the prescribed Authority may give in this behalf, carry on the routine duties of the Nagar Pramukh till a Nagar Pramukh or Upa Nagar Pramukh is elected.

101. Presence of Mukhya Nagar Adhikari and other officers at meetings.—(1) The Mukhya Nagar Adhikari shall have the right of being present at a meeting of the Mahapalika or of any Committee, sub-committee, Joint Committee or Special Committee constituted under this Act and of taking part in the discussion thereat and with the permission of the Presiding Officer, may at any time make a statement or explanation of facts but shall not be at liberty to vote upon or to make any proposition at such meeting.

(2) The Mahapalika or any Committee, Special Committee, Joint Committee or sub-committee referred to in sub-section (1) may require any of the officers of the Mahapalika to attend any of its meetings or meeting at which any matter dealt with by such officer in the course of his duties is being discussed and if any officer is required to attend such meeting, he may be called upon to make a statement or explanation of facts or supply such information in his possession relating to any matter dealt with by him as the Mahapalika, or any Committee, Special Committee, Joint Committee or sub-committee, as the case may be, may require.

(3) Any officer specially authorized by the State Government in this behalf shall be entitled to attend the meeting of the Mahapalika and to address it on any matter affecting his department or in respect of which he has special knowledge.

(4) The Mahapalika may request the State Government to direct the Head of any Government department or any other officer of that department to attend a meeting of the Mahapalika.

102. Proceedings of the Mahapalika, Executive Committee, etc.—The meeting of the Mahapalika, the Executive Committee, the Development Committee and all other Committees and sub-committees shall be held and the business before them conducted and disposed of in the manner prescribed by bye-laws made by the Mahapalika.

103. Bye laws under this Chapter.—(1) Subject to and consistent with the provision of this Act, the Mahapalika may make bye-laws for regulating the holding of and the conduct of business at its meeting and the

meetings of the Executive Committee, the Development Committee, Committees constituted under Section 5, Special Committees, Joint Committees and sub-committees.

(2) Without prejudice to the generality of powers conferred under subsection (1) the bye-laws may provide for—

- (i) the time and place of meetings of the Mahapalika, Committees and sub-committees;
- (ii) the manner in which notice of such meetings shall be given ;
- (iii) the management and adjournment of such meetings, and the regulation of orderly conduct of business thereat, including the withdrawal or suspension of members guilty of disorderly conduct ;
- (iv) the procedure at meetings of the Mahapalika, Committees and sub-committees ;
- (v) the minute book, and keeping of record of proceedings of Mahapalika, Committees and sub-committees ;
- (vi) inspection of minutes and reports of proceedings and supply of copies thereof to members and other persons on payment of fee or otherwise ;
- (vii) constitution of Committees and sub-committees ;
- (viii) appeal from decisions of sub-committees to the Committee appointing it ;
- (ix) conditions attaching to the right to ask question and the answering of such questions.

(3) The bye-laws made under this section shall be subject to the provisions of Sections 542, 543, 544, 546, 547 and 549.

104. Vacancies, etc., not to invalidate proceedings.—(1) No act or proceedings of the Mahapalika or of any Committee or sub-committee appointed under this Act shall be invalid or be questioned on account of any vacancy in its body.

(2) No disqualification of, or defect in, the election or appointment of any person acting as a Sabhasad or a Vishishta Sadasya or as Nagar Pramukh or Upa Nagar Pramukh or Presiding Officer of the Mahapalika or as Chairman or Vice-Chairman or member of any Committee or sub-committee appointed under this Act shall be deemed to vitiate any act or proceeding of the Mahapalika or of any such Committee or sub-committee as the case may be, in which such person has taken part, provided the majority of the persons who were parties to such act or proceedings were entitled to act.

(3) Until the contrary is proved, every meeting of the Mahapalika or of a Committee or sub-committee in respect of the proceedings whereof a minute has been made and signed in accordance with this Act or the bye-laws shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified ; and where the proceedings are proceedings of a Committee or sub-committee, such Committee or sub-committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

Comments

Analogous Law.—Section 113 of the Municipalities Act.

Sub-section (1) and sub-section (2)—Distinction.—While dealing with the analogous section 113 of the Municipalities Act in the case of *Abdul Latif v. Commissioner, Gorakhpur*¹, it was held by a Division Bench that the doctrine of "de facto title" embodied in Section 113 (2) cannot be recognised as embodied in section 113 (1) because the province of the two sub-sections of Section 113 are distinct in nature and altogether different in object. Sub-section (1) operates to protect the validity of an act or proceeding of the Board or of its Committee where the Act is done or proceedings taken and it is discovered that there was a vacancy in fact as well as in the contemplation of law in the Board or in the committee. Sub-section (2) assumes that there was no vacancy in fact but that a person, who although disqualified or whose election, nomination or appointment was defective, nevertheless under colour of office or title in fact participated in the act or proceeding. Sub-section (1) deals with a vacancy in fact as well as in law, while sub-section (2) treats of a vacancy in law but participation in fact.

105. Bar to questioning of act and proceeding on ground of mere irregularity.—No act done or proceeding taken under this Act shall be called in question in any court on the ground merely of any defect or irregularity in procedure not affecting the substance.

Comments

Bar of jurisdiction of courts.—See notes under Section 226 in this Book.

CHAPTER IV

Officers and Staff

106. Creation of posts.—(1) Subject to such conditions as may be prescribed a Mahapalika may from time to time create one or more of the following posts, as it may consider necessary, in connexion with its affairs, namely,—

- (i) Upa Nagar Adhikari ;
- (ii) Sahayak Nagar Adhikari ;
- (iii) Nagar Abhiyanta ;
- (iv) Nagar Swasthya Adhikari ;
- (v) Mukhya Nagar Lekha Parikshak ; and
- (vi) other posts of officers, staff and other servants necessary for the efficient discharge of its functions :

Provided that where the State Government orders to the effect that the Mahapalika do create a post, it shall be obligatory for the Mahapalika to create such post :

Provided further that a post created under the first proviso shall not be abolished without the sanction of the State Government.

1. A. I. R. 1968 All. 44 (49) (D. B.).

(2) The qualifications of persons to be appointed to posts created under sub-section (1) shall be such as may be prescribed by the State Government.

107. Appointment of posts.—(1) ¹[Appointments to the posts of Upa Nagar Adhikari, Sahayak Nagar Adhikari, Nagar Abhiyanta, Nagar Swasthya Adhikari, Mukhya Nagar Lekha Parikshak and to other posts carrying an initial salary of not less than rupees five hundred per mensem shall be made by the Nagar Pramukh after consultation with the State Public Service Commission in the manner prescribed and not otherwise] :

Provided that the appointment of Nagar Swasthya Adhikari shall preferably be made out of officers of the Public Health Department of the State Government whom the State Government may be agreeable to send on deputation and in such case consultation with the Public Service Commission shall not be necessary.

(2) ¹[Appointments to other posts carrying an initial salary of not less than rupees two hundred per mensem shall be made after consultation with the State Public Service Commission in the manner prescribed and not otherwise.] The authority to appoint such officers and servants of the Mahapalika shall vest—

(a) in respect of those officers and servants who are immediately subordinate to the Mukhya Nagar Lekha Parikshak, in the Mukhya Nagar Lekha Parikshak, and

(b) in respect of all other officers and servants, in the Mukhya Nagar Adhikari.

(3) All other appointments except those specified in sub-sections (1), (2) and (5) shall be made in accordance with the recommendations of a Selection Committee constituted under sub-section (4) and authority to make such appointments shall vest—

(a) in respect of those officers and servants who are immediately subordinate to the Mukhya Nagar Lekha Parikshak, in the Mukhya Nagar Lekha Parikshak, and

(b) in respect of all other officers and servants, in the Mukhya Nagar Adhikari.

(4) The Selection Committee referred to in sub-section (3) shall consist of the Mukhya Nagar Adhikari or his nominee, the Mukhya Nagar Lekha Parikshak and Head of the Department for which the appointment is to be made. The Mukhya Nagar Adhikari and, in his absence, the member designated by him for the purpose, shall be the Chairman of Selection Committee :

²[Provided that the Committee referred to above which may be substituted in connexion with the appointments of officers and servants immediately subordinate to the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, shall consist of the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, as the case may be, as Chairman and two other officers of the Mahapalika who shall be nominated by the executive committee as members.]

1. Subs. by U. P. Act XXI of 1964.

2. Subs. by S. 5 of U.P. Act XIV of 1959.

(5) Appointments to posts in the engineering, waterworks, public health and other departments of the Mahapalika and carrying an initial salary of not more than ¹[rupees fifty per mensem] shall be made by the Heads of the departments concerned specified under Section 112 subject however to any bye-laws made by the Mahapalika in this behalf.

(6) In the case of any difference of opinion between the appointing authority and the State Public Service Commission a reference shall be made by the Mukhya Nagar Adhikari to the State Government whose decision shall be final.

Comments

'Salary'—Scope.—This word is used in section 75 (a) of the U. P. Municipalities Act and there it was held to include 'dearness allowance' vide *Chandra Gupta v. State of U. P.*².

108. Officiating and temporary appointments to certain posts.—Notwithstanding anything contained in Section 107 officiating and temporary appointments to posts mentioned in sub-sections (1), (2) and (3) of the said section may be made by the appointing authorities specified in those sub-sections without consulting the State Public Service Commission or obtaining the recommendation of the Selection Committee, but no such appointment shall continue beyond the period of one year, nor shall be made where it is expected to last for more than a year, without consulting the State Public Service Commission or otherwise than in accordance with the recommendation of the Selection Committee, as the case may be.

109. Conditions of service etc.—The emoluments and other conditions of service of officers, staff and other servants of the Mahapalika shall be such as may be prescribed by the State Government.

Comments

Conditions of service—Rules under Municipalities Act to apply or not.—There is one thing to say that the provisions of a certain Act have been repealed, but there is another thing to say that the conditions of service of a certain person will be governed by the conditions of service contained in that Act. The Act may have been repealed, but the provisions relating to the conditions of service remain intact. The Act does not repeal the conditions of service. Section 581 of the U. P. Nagar Mahapalika Adhiniyam, therefore, does not repeal the provisions of Section 577 (e) of that Adhiniyam so as to make them nugatory. Even if the two provisions contained in Sections 577 (e) and 581 are destructive of each other, then there is a well known rule of the interpretation of statutes that a particular enactment is not repealed by a general enactment in the same statute, vide *State of Bombay v. United Motors (India) Ltd.*³ The rules under the repealed Municipalities Act will therefore, continue to apply, vide *Gur Bux Lal v. Lucknow Nagar Mahapalika*⁴.

Under Section 577 (e), so long as the post of a person under the Nagar Mahapalika was not determined, he continued to be an employee of the Mahapalika in a temporary capacity, but that did not mean that the rules relating to temporary servants would apply to him. Section 577(e) guarantees his conditions of service being the same as those which were applicable to him when he was an employee of the Municipal Board. As there are no rules of the Municipal Board as to the suspension of an employee of the post we have in the circumstances, to fall back on the general law, *Guru Bux Lal's case*⁴. See section 110 for further discussion.

1. Subs. by U. P. Act XXI of 1964.

2. 1968 A. L. J. 491.

3. A.I.R. 1953 S.C. 252 (273)

4. A.I.R. 1966 All. 552 (554),

110. Punishment of officers of the Mahapalika.—(1) The authority entitled under Section 107 to make appointments to any post shall be the authority entitled to dismiss, remove from service or otherwise punish any person holding such post :

Provided that in the case of employees whose appointment is required to be made in consultation with the State Public Service Commission under Section 107, it shall be necessary for the authority concerned to consult the Commission in the manner prescribed, before passing an order for the dismissal, removal or reduction in rank of any such employee.

(2) Punishment of officers and servants of the Mahapalika shall be subject to such right of appeal as may be prescribed.

Comments

Analogous Law—Some what similar to section 69-A and section 58 (read together) of the Municipalities Act.

Status of Municipal servants.—The Municipal servants were earlier considered to stand on the same footing as other public and Government servants. They were treated under the same disability as other public servants vide *Shanker Lal Dahania v. Bal Kishan*¹. But the view appears to have now been changed when it is held that such an employee cannot be regarded a member of a civil service of the State and it cannot also be said that he holds a civil post under the State, vide *Tej Bhan v. R. D. Board*², *Mangal Sen v. State of Punjab*³ and benefit of Art. 310 and 311 of the Constitution cannot be extended to them, vide *S.D. Mathur v. Municipal Board, Agra*⁴, *Shyam Lal Gupta v. State*,⁵ *Gur Bux Rai v. Lucknow Nagar Mahapalika*,⁶ Also see the Head note below "Civil post under a State—Art. 311 of Constitution" under this Section.

"Civil Post under a State"—Art. 311 of Constitution.—Under the control of the State, that is, the State can abolish the post if it so desires, or the State can regulate the conditions subject to which the post is or will be held. The real test, therefore, is the immediate or ultimate control which is exercised by the State with regard to the post in question. So the true test in determining whether a person comes with Art. 311 of the Constitution is not whether his salary or wages are paid from State funds; the true test is whether he is a member of a civil service of a state or whether he holds a civil post under a State, vide *Lachmi v. Military Secretary*.⁷

On an examination of the authorities cited below⁸, including Allahabad High Court cases, the Full Bench of the Allahabad High Court in *M.A. Kidwai v. Improvement Trust, Lucknow*,⁹ came to the conclusion that the true test to deter-

- i. 1937 A.L.J. 1227.
2. A.I.R. 1953 Pepsu 99.
3. A.I.R. 1952 Punjab 58.
4. 1956 A.L.J. 71 (73).
5. 1956 A.L.J. 483.
6. A.I.R. 1966 Alld. 552 (554).
7. A.I.R. 1956 Pat. 398 (402) (D.B.)
8. 1938 A.L.J. 351 : 1938 A.I.R. Alld. 276 : 1937 A.L.J. 1227 : A.I.R. 1938 Alld. 57 : 1939 A.L.J. 9 : A.I.R. 1953 Calcutta 581; A.I.R. 1955 Calcutta 56; A.I.R. 1952 Punjab 58 ; A.I.R. 1952 T.C. 264 : A.I.R. 1953 Pepsu 99 : A.I.R. 1955 Patna 223 : A.I.R. 1956 Patna 398 : A.I.R. 1957 Patna 10 : A. I. R. 1957 Patna 333 : A. I. R. 1957 Punjab 219 : 1956 A.L.J. 483 : 1956 A.L.J. 592
9. 1958 A.L.J. 160 (169) (D. B.)

mine whether a person held a civil post under the Crown as contemplated by Section 240 of the Government of India Act or was a member of a civil service of the Union or the State or held a civil post under the Union or the State had primarily to be determined in relation to the functions which he performed. If his duties relates to activities which fell directly within the sphere of the Union or the State and his service were under the direction and control, as also his his appointment was by either the Union or the State, then he could fall under those services which were contemplated by either Section 240 of the Government of India Act or by Art. 311 of the Constitution of India, but if the sphere of activity of the employee fell within the sphere of activity of a local authority constituted under some Statute having a separate legal existence, then the position of that employee, even though the State or the Union controlled some of his activity and give him direction in the discharge of his functions fell outside scope of either Section 240 of the Government of India Act or Art. 311 of the Constitution of India.

Art. 311 of the Constitution—Not applicable to Municipal employees.—It was so held in *Shyam Lal Gupta v. State*¹ and *M.A. Kidwai v. Chairman Improvement Trust Lucknow*².

Dismissal and Termination of services—Distinction—In the former case, a charge has to be framed and an opportunity has to be given to the person who is to be dismissed for defending himself. But in case of termination of services it is not necessary as no misconduct is alleged against the person concerned, vide *Shyam Lal Gupta v. State*¹

Non-compliance of rules (made by the Municipal Board)—Remedy of Municipal servants—No suit lies.—The remedy of the person aggrieved in case of non-compliance of the rules does not lie by a suit in Civil Court but is by way of appeal of official kind prescribed in the rules, vide *Shankar Lal Dahania v. Bal Kishan*³

Non-compliance of Rules, (made by the State Government)—No suit lies.—Where the dismissal is against the statutory provisions, as was in the case of *R. T. Rangachari v. Secretary of State*⁴ it was held by the Privy Council that it is manifest that the stipulation or proviso as to dismissal is itself of statutory force and stands on a footing quite other than any matters of rule which are of infinite variety and can be changed from time to time and this statutory safeguard should be observed with the utmost care and the suit in such case lies in civil court. It was so held also at pages 1229-1230 in *Shankar Lal Dahania v. Balkishan*³ that if the procedure for dismissal which is prescribed in the rules (which have been framed by the Municipal Board and had been prescribed in Cl. (b) it might have been urged with some force that in as much as the procedure which had been prescribed by the statute in section 77 not been complied with, the action was illegal. Also see in *Re. Venkata Rao v. Secretary of State*.⁵

Damages regarding dismissal made against rules made by the Board—No suit lies.—See *Shankar Lal v. Bal Kishan*³.

1. 1956 A.L.J. 483.

2. 1958 Alld. 353 (F.B.) Also see A.I.R. 1955 Cal. 56.

3. 1937 A.L.J. 1227.

4. A.I.R. 1937 (P.C.) 27.

5. A.I.R. 1937 (P.C.) 31.

Action taken through malice—No suit lies.—See Shanker Lal v. Bal Kishan¹, Municipal Board of Benaras v. Behari Lal and others.²

'Interim suspension' and 'suspension as a penalty'—Distinction—Suspension pending an enquiry is not a penalty. The supreme Court in *R. P. Kapur v. Union of India*³ discussed it at some length. It is laid down therein that on general principles the Government like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order of suspension as a punishment if the rules so permit. This will be suspension as a penalty. The last sentence, therefore, has been used with respect to the suspension as a penalty or by way of punishment. Suspension in this case is not by way of punishment but only pending inquiry.

Suspension can be made by an Officer lower in rank than the Appointing Authority.—It cannot, therefore, be said that because a person was appointed by the Executive Officer, he could not be suspended during the pendency of a departmental enquiry by an officer lower in rank than the Executive Officer either on the ground that Article 311 of the Constitution applied to such a case or on the ground that suspension, is a punishment, vide *Gur Bux Rai v. Lucknow Nagar Mahapalika*⁴. But in that case it was further held that in this case, therefore, in the absence of any rule, the Executive Officer, now succeeded by the Mukhya Nagar Adhikari, could suspend the petitioner and not the Nagar Swasthya Adhikari. As to the remuneration pending suspension, there being no rules, the petitioner was entitled to full remuneration during the period of suspension.

Suspension during enquiry—General Law.—"The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No. X of 1897, which lays down that where any General Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention

1. 1937 A.L.J. 1227 (1231).

2. A.I.R. 1926 Alld. 538.

3. A.I.R. 1964 S. C. 787 (793).

4. A.I.R. 1966 Alld. 552 (554).

appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provisions the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On General principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension or the Government may proceed to hold a departmental enquiry and after his being found guilty order of suspension as a punishment if the rules so permit, vide *R.P. Kapur v. Union of India*¹ and followed in *Gur Bux Rai v. Lucknow Nagar Mahapalika*² in a case where there were no specific rules in the Adhiniyam in this respect.

Present Rules regarding punishment, etc.—Certain rules have now been framed by the State Government known as the Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 in exercise of the powers under sections, 106, 109, 110, 113 and sub-section (1) of section 540 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 and they are contained in the U. P. Gazette dated the 22nd of December, 1962, Part I-A, p. 371-A onwards. Under section 28 of those Rules a servant of a Mahapalika against whose conduct an inquiry is contemplated or is proceeding, may be placed under suspension pending the conclusion of the inquiry at the discretion of the appointing authority.

Fundamental Rules—Not applicable to Municipal Employees—(Where Municipal Regulations governing condition of service were existing). It was held in *Badri Prasad Dubey v. State of U. P.*³ that a Municipal employee cannot rely on the fundamental rules ignoring the regulations framed (by the Municipal Board or the State Government) which specially deal with the question (of retirement of that case) of the Municipal employees. Also see *Ram Chandra v. State*⁴.

Art. 310 of the Constitution—Not applicable to Municipal servants.—Although under Art. 310 of the Constitution all civil posts are held at the pleasure of the President or the Governor, still there is a statutory guarantee given to an employee which is embodied in Art. 310. But as held in *S. D. Mathur v. Municipal Board, Agra*⁵ that principle embodied in Art. 310 cannot be made applicable to the statutory bodies or to an Administrator who is the creation of an Act because a statutory body has to act in accordance with the terms of the statute, vide *S. D. Mathur v. Municipal Board, Agra*⁵.

Art. 226 of the Constitution—High Court can interfere.—See *S. D. Mathur v. Municipal Board*⁵ where the High Court quashed the order of terminating services of Executive Officer made by the Administrator.

Appointment, Dismissal and Termination of services.—In matter of appointment and dismissal or termination of services, it has to act in accordance with the provisions of the statute and unless there is a provision in the statute which

1. A.I.R. 1964 S.C. 787 (793)
2. A.I.R. 1966 All. 552 (554).
3. 1956 A.L.J. 592 (595).
4. A.I.R. 1969 All. 480.
5. 1956 A.L.J. 71 (73).

directly or indirectly empowers the Board to terminate the services of an employee, it is not open to the Board to discharge an employee at its pleasure. In cases where terms and conditions of employment are regulated by contract between the employer and the employee, it may be open to the employer to terminate the services of the employee in accordance with the terms of the contract under which the Board was authorised to terminate the services unless there is any power given to the Board to terminate the services of an employee, it cannot do so. Services may as well terminate if an employee has attained the age of retirement as laid down in the Rules or when the post itself has been abolished, vide *S. D. Mathur v. Municipal Board*¹.

Discharge from service.—(Even as a measure of economy).—*Personal hearing essential*—In a case under Section 44 of the Rules framed by the State Government it was held in *S. D. Mathur v. Municipal Board*¹, that if servant has been discharged from service, even as a measure of economy or retrenchment, his discharge has to be treated as punishment or removal and he need be given a personal hearing before dismissal.

111. Power of the State Government to make appointments—Where any authority specified in Section 107 fails within a reasonable time to make appointment to any post specified in Section 106 or created thereunder the State Government may after giving the authority due opportunity and consulting the State Public Service Commission, if necessary, make appointment thereto and such appointment shall then be deemed for all purposes to have been made by the authority concerned.

Comments

Validity—The sub-clause (4) of the analogous provision as contained in section 69-A of the Municipality was urged to be discriminatory and particularly because no appeal was provided against an order made by the State Government in respect of dismissal, removal, etc. in the case of *Sheeti Prasad v. Raghubir Dutt*² but his Lordship repelled that contention and held that a right of appeal is not a common law right. It is a right which is claimable under the statute by which the main right is conferred. Where, therefore the statute has not provided a right of appeal against the order of a particular authority none such will belong to any party and there will hardly be any question of discrimination.

But under this Adhiniyam, the order of dismissal, etc., can be passed only by the appointing authority although in some cases in consultation with the public service Commission and appeal against such order has been specifically provided under sub-section (2) of this section and such provision appears to have been made so as to avoid any possible discrimination and consequently this section cannot be urged to be discriminatory.

Dismissal, Removal and other punishment.—*Absence of rules in respect of procedure*—*Effect.*—Such power belongs to the appointing authority by virtue of sub-section (1) of this section and independantly of the rules in this respect to be made under section 113 of this Adhiniyam. The absence of the rules may expose the procedure or enquiry itself to some further scrutiny but to call it void *ab initio* on the ground that the appointing authority has no power will not be correct, vide *Sheeti Prasad v. Raghubir Dutt*².

1. 1956 A. L. J. 71.

2. A. I. R. 1960 Alld. 273 (276).

Where all the fundamentals applicable to enquiries even in absence of specific rules, i. e., charges were served upon the employee concerned, opportunity to inspect documents was allowed, both parties were given opportunity to adduce evidence were observed it was held that it would not be proper for the High Court to interfere in the matter more so because in the case appellate authority (in that case the State Government) finds that any prejudice has been caused to that employee by the absence of the rules, it might send back or quash the proceedings, vide *Sheeti Prasad v. Raghubir Datt*¹.

112 Power and duties of certain officers.—(1) The Upa Nagar Adhikari and Sahayak Nagar Adhikari shall subject to the control of the Mukhya Nagar Adhikari, exercise such powers and perform such duties of the Mukhya Nagar Adhikari as the Mukhya Nagar Adhikari may specify in this behalf.

(2) All acts done and jurisdictions exercised by the Upa Nagar Adhikari or the Sahayak Nagar Adhikari in pursuance of the powers delegated to him under sub-section (1) shall, for all purposes, be deemed to have been performed and done by the Mukhya Nagar Adhikari.

(3) The Nagar Abhiyanta, the Nagar Swasthya Adhikari, the Mukhya Nagar Lekha Parikshak and such other officers as may be specified by the State Government shall be called the Heads of the Departments of the Mahapalika and shall perform such duties and shall exercise such powers as are imposed upon them by or under this Act or any other enactment for the time being in force.

2[112. A. Centralization of services.—(1) Notwithstanding anything contained in Section 106 to 110, the State Government may at any time by rules provide for the creation of one or more services of such officers and servants as the State Government may deem fit, common to the Mahapalikas or to the Mahapalikas and Municipal Boards of the State, and prescribe the method of recruitment and conditions of service of persons appointed to any such service.

³(2) When any such service is created, officers and servants serving on the posts included in the service, as well as officers and servants performing the duties and functions of those posts under sub-clause (1) of clause (cc) of section 577 may, if found suitable, be absorbed in the service, provisionally or finally, and the services of others shall stand determined, in the prescribed manner.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), such rules may also provide for consultation with the state Public Service Commission in respect of any of the matters referred to in the said sub-sections.]

112 B. Essential services.—The following services of the Mahapalika shall be the essential services, namely :—

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1. A. I. R. 1960 Alld. 273 (276).
 2. New Sections 112-A, 112-B, 112-C and 112-D added by U. P. Act XXI of 1964.
 3. Sub-section (2) and (3) were subs by Act XXIX of 1966.

- (a) medical and public health services ;
- (b) waterworks and mechanical engineering services ;
- (c) sweepers ;
- (d) staff of the lighting department ;
- (e) transport services ; and
- (f) such other services as may be specified in the rules,

112.C Member of essential services not to resign, etc. without permission.—No member of an essential service shall—

- (a) resign his office or withdraw or absent himself from the duties thereof, except—
 - (i) after obtaining written permission from the Mukhya Nagar Adhikari or any officer authorised by him in this behalf ; or
 - (ii) in the event of illness or accident disabling him from the discharge of his duties or for such other reasons as the Mukhya Nagar Adhikari or other officer authorised by him in this behalf may consider sufficient ; or
 - (iii) after giving three months notice in writing to the Mukhya Nagar Adhikari ; or
- (b) neglect or refuse to perform his duties or wilfully perform them in a manner which, in the opinion of the Mukhya Nagar Adhikari or such other officer, as aforesaid, is inefficient.

112.D. Power of State Government to declare emergency.—(1) If the State Government is of the opinion that the stopage or the cessation of the performance of any of the essential services will be prejudicial to the safety or health or to the maintenance of services essential to the life of the community in the City it may, by notification in the official *Gazette*, declare that an emergency exists in the City and specify the period for which such declaration shall be in operation.

(2) While a declaration of emergency under sub-section (1) is in operation no member of such of the essential services as may be specified in the notification shall, notwithstanding any law or agreement to the contrary for the time being in force—

- (a) withdraw or absent himself from his duties except in the event of illness or accident disabling him from the discharge of his duties ; or
- (b) neglect or refuse to perform his duties or wilfully perform them in a manner which in the opinion of such officer as the State Government may specify in this behalf is inefficient.]

113. Power to make rules.—(1) The State Government may make rules for the purposes of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers such rules may provide for—

- (a) the method of recruitment, and qualification of persons to be appointed to the posts created in connection with the affairs of the Mahapalika ;
- (b) the designation and grade of posts of officers, staff and other servants created under clause (v) of sub-section (1) of Section 106 ;
- (c) the appointment of persons in temporary or officiating capacity ;
- (d) the salaries, emoluments and other allowances of persons appointed to the aforesaid posts ;
- (e) the leave, punishment, including dismissal and removal, appeal and other disciplinary matters and other conditions of service of the officers, staff and other servants of the Mahapalika ; ¹[*]
- (f) specification of officers as Head of Department of the Mahapalika ; ²[and]
- ²[(g) the creation of municipal services under Section 112-A and recruitment thereto, absorption of existing officers and servants therein, and transfer, leave, punishment, including dismissal and removal, appeal, and other disciplinary matters and other conditions of service of such officers and servants.]

Comments

Absence of rules regarding dismissal, etc.—Effect—See Headnote “Dismissal, removal and other punishment—Absence of rules in respect of procedure—Effect” under section 111 of this Commentary. Also see *Sheeti Prasad v. Raghubar Datt*¹.

CHAPTER V

Duties and Powers of the Mahapalika and Mahapalika Authorities

114. Obligatory duties of the Mahapalika.—It shall be incumbent on the Mahapalika to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely,—

- (i) erection, where there are no natural boundary marks, of substantial boundary marks of such description and in such a position as shall be approved by the State Government defining the limits or any alteration in the limits of the City ;
- (ii) the naming or numbering of streets and of public places vesting in the Mahapalika and the numbering of premises ;

1. *Omit.* by S. 13, *ibid.*

2. *Ins.* by S. 13, *ibid.*

3. A.I.R. 1960 Alld. 273 (276)

- (iii) the collection and removal of sewage, offensive matter and rubbish and treatment and disposal thereof including establishing and maintaining farm or factory ;
- (iv) the watering, scavenging and cleansing of all public streets and places in the City and the removal of all sweepings therefrom ;
- (v) the construction, maintenance and cleansing of drains and drainage works, and of public latrines, water-closets, urinals and similar conveniences ;
- (vi) supplying, constructing and maintaining in accordance with the general system approved by the Mahapalika receptacles fittings pipes and other appliances whatsoever on or for the use of premises for receiving and conducting the sewage thereof into drains under the control of the Mahapalika ;
- (vii) the management and maintenance of all Mahapalika water works and the construction or acquisition of new works necessary for a sufficient supply of water for public and private purposes ;
- (viii) guarding from pollution water used for human consumption and preventing polluted water from being so used ;
- (ix) the lighting of public streets, Mahapalika markets and public buildings and other public places vested in the Mahapalika ;
- (x) the establishment, maintenance or supports of public hospitals and dispensaries including hospitals for the isolation and treatment of persons suffering or suspected to be infected with a contagious or infectious disease and carrying out other measures necessary for public medical relief ;
- (xi) preventing and checking the spread of contagious, infectious and dangerous diseases ;
- (xii) provision for anti-rabic treatment ;
- (xiii) maintenance of ambulance service ;
- (xiv) establishing and maintaining a system of public vaccination ;
- (xv) the registration of vital statistics including births and deaths ;
- (xvi) establishing, maintaining and assisting maternity centres and child welfare and birth control clinics ;
- (xvii) the organization, maintenance or management of chemical or bacteriological laboratories for the examination or analysis of water, food or drugs, for the detection of diseases or adulteration or for researches connected with public health ;
- (xviii) the reclamation of unhealthy localities, the removal of noxious vegetation and generally the abatement of all nuisances ;
- (xix) the regulation and abatement of offensive and dangerous trades, callings or practices including prostitution ;
- (xx) the maintenance, fixing and regulation of places for the disposal of the dead and the provision of new places for the said purpose and disposing of unclaimed dead bodies or aiding within its means any arrangement made with the same objects by any other institution ;

- (xxi) the construction and maintenance of public markets and slaughter-houses and the regulation of all markets and slaughter-houses ;
- (xxii) the securing or removal of dangerous buildings and places ;
- (xxiii) maintaining hydrants and rendering such assistance, including the maintaining or managing of a fire brigade in extinguishing fires and protecting life and property when fires occur, as the State Government may by general or special order direct from time to time ;
- (xxiv) the removal of obstructions and projections in or upon streets, bridges and other public places ;
- (xxv) establishing, maintaining, aiding and suitably accommodating schools for primary education including nursery education ;
- (xxvi) establishing and maintaining or granting aid to institutions of physical culture ;
- (xxvii) maintaining or contributing to the maintenance of veterinary hospitals ;
- (xxviii) the construction or acquisition and maintenance of cattle-pounds ;
- (xxix) the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways, culverts, causeways and the like ;
- (xxx) planting and maintaining trees on road sides and other public places ;
- (xxxi) regulation of traffic and provision of traffic signs ;
- (xxxii) assisting by constructing and maintaining residential quarters, by giving loans in the proper housing of Mahapalika conservancy staff and all sections of working classes ;
- (xxxiii) town planning and improvement including slum clearance and preparation and execution of housing schemes and laying out of new streets ;
- (xxxiv) maintaining and developing the value of property vested in, or entrusted to the management of the Mahapalika ;
- (xxxv) the maintenance of a Mahapalika office and of all public monuments and open space and other property vesting in the Mahapalika ;
- (xxxvi) the issue of a Bulletin reporting proceedings or substance of proceedings of the Mahapalika and of its committees and giving other information about the activities of the Mahapalika ;
- (xxxvii) prompt attention to official letters and preparation and submission of such return, statements and reports as the State Government requires the Mahapalika to submit ; and
- (xxxviii) fulfilment of any obligation imposed by or under the Act or any other law for the time being in force.

115. Discretionary duties of Mahapalika.—The Mahapalika may, in its discretion, provide from time to time, either wholly or partly, for all or any of the following matters, namely :

- (i) the organization, maintenance or management of institutions including lunatic asylums, leper homes, orphanages and rescue homes for women, within or without the City for the care of persons who are infirm, sick or incurable ; or for the care and training of blind, deaf, mute or otherwise disabled persons or of handicapped children ;
- (ii) the provision of milk to expectant or nursing mothers or infants or school children ;
- (iii) swimming pools, public wash houses, bathing places and other institutions designed for the improvement and construction of bathing *ghats* on river banks ;
- (iv) dairies or farms within or without the City for the supply, distribution and processing of milk or milk products for the benefit of the residents of the City ;
- (v) the construction and maintenance in public streets or places of drinking fountains or drinking sheds or stand-posts for human beings and water-troughs for animals ;
- (vi) encouraging music and other fine arts and providing music in public place or places of public resort ;
- ✓(vii) making grants to educational and cultural institutions situated within and outside the City ;
- (viii) the provision of public parks, gardens, play-grounds and recreation grounds, installing statues and beautifying the City ;
- (ix) the holding of exhibitions, athletics or games ;
- (x) the regulation of lodging houses, camping grounds and rest-houses in the City ;
- (xi) the construction, establishment and maintenance of theatres, rest-houses and other public buildings ;
- (xii) the organization or maintenance, in times of scarcity, of shops or stalls for the sale of necessities of life ;
- (xiii) the building or purchase and maintenance of dwellings for Mahapalika officers and servants ;
- (xiv) the grant of loans for building purposes to Mahapalika servants on such terms and subject to such condition as may be prescribed by the Mahapalika ;
- (xv) any other measures for the welfare of Mahapalika servants or any class of them ;
- (xvi) with the State Government's previous sanction, the purchase of any undertaking for the supply of electrical energy or gas or the starting or subsidizing of any such undertaking which may be in the general interest of the public ;
- (xvii) with the State Government's previous sanction the construction, purchase, organization, maintenance or management of tramways, trackless trams or motor transport facilities for the conveyance of the public or goods within or without the City ;
- ✓(xviii) the furtherance of educational objects other than those mentioned in clause (xxv) of Section 114 and making grants to educational institutions within or without the City ;

- ✓(xix) the establishment and maintenance or the aiding of libraries, museums and art galleries, botanical or zoological collections and the purchase or construction of buildings therefor ;
- (xx) construction, establishment, maintenance or contributions to the maintenance of baths, bathing *ghats*, washing places, tanks, wells, dams and other works of public utility ;
- (xxi) the construction or maintenance of infirmaries or hospitals for animals ;
- (xxii) the destruction of birds or animals causing a nuisance or of vermin, and the confinement or destruction of stray or ownerless dogs ;
- (xxxiii) contributions towards any public fund raised for the relief of human suffering within the City or for the public welfare ;
- (xxiv) presentation of civic addresses and holding of civic receptions ;
- (xxv) the acquisition and maintenance of grazing grounds and the establishment and maintenance of a breeding stud ;
- (xxvi) grant of loans or other facilities to any person, society or institution interested in the provision of dwellings or the execution of house schemes ;
- (xxvii) the provision of poor relief ;
- (xxviii) the building or purchase and maintenance of *gaushalas* and of sanitary stables of horses, ponies or cattle used in hackney carriages or cart ;
- (xxix) surveys of buildings or lands ;
- (xxx) relief measures to meet any calamity affecting the public in the City ;
- (xxxi) the adoption of any measure likely to promote the public safety, health or convenience than a measure specified in Section 114 or in the other clauses of this section ;
- (xxxii) subject to the provision in the budget, the making of a contribution towards any public ceremony or entertainment in the City ;
- (xxxiii) the establishment and maintenance of tourist bureau ;
- (xxxiv) the establishment and maintenance of a press and workshop for Mahapalika work as also for undertaking private work on charges in spare time ;
- (xxxv) making arrangement for preparation of compost manure from nightsoil and rubbish ;
- (xxxvi) taking measures to promote trade and industry and establishing a Mahapalika bank ;
- (xxxvii) establishing Labour Welfare Centres for its employees and subsidizing the activities of any association, union or club of such employees by grant or loan for its general advancement ;
- (xxxviii) organizing or contributing to municipal board unions ;
- (xxxix) making provision for removal of social disabilities of Scheduled Castes and Backward Classes ;
- (xl) taking measures for the control and relief of beggary ;

- (xli) with the previous sanction of the State Government the setting up and maintenance of a Mahapalika police force for taking over and discharging such police duties and in such manner as may be prescribed ;
- (xlii) with previous sanction of the State Government, the undertaking of any commercial duty providing or promoting amenity or employment or removing unemployment ;
- (xliii) the doing of anything whereupon expenditure is declared by the State Government or by the Mahapalika with the sanction of the State Government to be an appropriate charge on the Mahapalika fund :

Provided that the State Government may in respect of any Mahapalika or all Mahapalikas by notification in the official *Gazette* declare any of the functions mentioned in this section to be a duty of the Mahapalika or all Mahapalikas and thereupon the provisions of this Act shall apply thereto as if it had been a duty imposed by Section 114.

116. Division of functions between Mahapalika authorities.—(1) The respective functions of the several Mahapalika authorities shall be such as are specifically prescribed by or under this Act.

(2) In the event of any doubt or dispute arising as to which Mahapalika authority any particular function belongs, the Mukhya Nagar Adhikari may, and if the Nagar Pramukh so requires shall, refer the doubt or dispute to the State Government whose decision shall be final and not open to question in any court of law.

“.....Not open to question in any court of law”.....*See notes on Section 49.*

Comments

Not open to question in any court.—See notes on Section 225 of this Book.

117. Functions of Mahapalika authorities.—(1) Except as otherwise expressly provided in the Act, the municipal administration of the City shall vest in the Mahapalika.

(2) Except as otherwise expressly provided in this Act the Executive Committee shall be vested, for and on behalf of the Mahapalika, with the superintendence of the municipal administration of the City.

(3) The Development Committee shall perform the functions and have the powers mentioned in Chapter XIV.

(4) The functions and powers of a Committee appointed under Clause (c) of Section 5 shall be such as may be assigned to it by the Mahapalika with the previous sanction of the State Government.

(5) Subject, whenever it is hereinafter expressly so directed to the sanction of the Mahapalika or of the Executive Committee, as the case may be, and subject to all other restrictions, limitations and conditions imposed by or under this Act, the executive power for the purposes of carrying out the provisions of this Act shall be vested in the Mukhya Nagar Adhikari who shall also perform all the duties and exercise all the powers specifically imposed or conferred on him.

(6) Without prejudice to the generality of the provisions of sub-section (5), the Mukhya Nagar Adhikari shall also—

- (a) subject to the provisions of this Act and the rules made thereunder, prescribe the duties of and exercise supervision and control over the acts and proceedings of all Mahapalika officers and servants other than the Mukhya Nagar Lekha Parikshak and the Mahapalika officers and servants immediately subordinate to him and disposed of all questions relating to the service of the said officers and servants and privileges and allowances ;
- (b) in any emergency take such immediate action for the service or safety of the public or the protection of the property of the Mahapalika as the emergency shall require notwithstanding that such action cannot be taken under this Act without the sanction, approval or authority of some other municipal authority or of the State Government :

Provided that the Mukhya Nagar Adhikari shall report forthwith to the Executive Committee and to the Mahapalika the action taken by him and the reasons for taking the same and the amount of cost, if any, incurred or likely to be incurred in consequence of such action not already covered by a budget grant :

Provided further that the Mukhya Nagar Adhikari shall not exercise his powers under this clause if the expenditure likely to be incurred over and above the budget grant in taking the particular action will—

- (a) exceed Rs. 10,000 or, where the Nagar Pramukh concurs in the taking of that action, Rs. 20,000 ; or
- (b) together with any expenditure over and above the budget grant already incurred under this clause in the financial year, exceed Rs. 50,000, or, where the Nagar Pramukh concurs in the taking of that action, Rs. 1,00,000.

118. Powers and duties of Mukhya Nagar Lekha Parikshak.—The Mukhya Nagar Lekha Parikshak shall—

- (a) perform such duties as he is directed by or under this Act to perform and such other duties with regard to the audit of the accounts of the Mahapalika Fund as shall be required of him by the Mahapalika or by the Executive Committee ;
- (b) prescribe, subject to such directions as the Executive Committee may from time to time give, the duties of the auditors and assistant auditors, clerks and servants immediately subordinate to him ; and
- (c) subject to the orders of the Executive Committee, exercise supervision and control over the acts and proceedings of the said auditors, assistant auditors, clerks and servants and, subject to the rules dispose of all questions relating to the service, remuneration and privileges of the said auditors, assistant auditors, clerks and servants.

119. Delegation of functions.—(1) Subject to the other provisions of this Act and the rules thereunder and subject to such conditions and restrictions as may be specified by the Mahapalika—

- (a) the Mahapalika may delegate to the Executive Committee or to the Mukhya Nagar Adhikari any of its functions under this Act other than those specified in Part A of Schedule I ;
- (b) the Executive Committee may delegate to the Mukhya Nagar Adhikari any of its functions under this Act other than those specified in Part B of Schedule I ;
- (c) the Development Committee may delegate to the Mukhya Nagar Adhikari any of its functions under this Act other than those specified in Part C of Schedule I ;
- (d) the Mukhya Nagar Adhikari may delegate to any municipal servants any of its functions other than those specified in Part D of Schedule I :

Provided that the State Government may from time to time by notification in the official *Gazette* declare any function specified in Part A, Part B, Part C or Part D of Schedule I be delegable or any function not specified therein to be non-delegable and upon such declaration that function may be delegated or shall cease to be delegable, as the case may be, as if it were not specified in Schedule I or were specified therein.

(2) Whenever there is delegation of functions by the Mukhya Nagar Adhikari, a copy of the order by which delegation is made shall be placed before the Executive Committee for information.

(3) Notwithstanding the delegation by the Mukhya Nagar Adhikari of any function under the Act under this section, the Mukhya Nagar Adhikari shall continue to be responsible for the due performance of the function.

Comments

Functions of Mahapalika, Executive Committee, Development Committee, Mukhya Nagar Adhikari which may not be delegated—See Parts A, B, C and D of Schedule I of this Act.

120. Mukhya Nagar Adhikari to exercise powers and perform duties of Mahapalika under other laws.—(1) Any powers, duties and functions conferred or imposed upon or vested in the Mahapalika by any other law for the time being in force, shall subject to the provisions of such law and to such restrictions, limitations and conditions as the Mahapalika may impose, be exercised, performed or discharged by the Mukhya Nagar Adhikari.

(2) The Mukhya Nagar Adhikari may, subject to any rules in that behalf, by order in writing of which a copy shall be placed before the Executive Committee for information empower any Mahapalika Officer other than the Mukhya Nagar Lekha Parikshak to exercise, perform or discharge any such power, duty or function under the control of the Mukhya Nagar Adhikari and subject to his revision and to such conditions and limitations, if any, as he may think fit to impose.

121. Mahapalika may call for extract from proceedings, etc., from the Executive Committee.—The Mahapalika may at any time call for any extract from any proceedings of any Committee or sub-committee constituted under this Act, and call for a return, statement, account or report concerning or connected with any matter with which any such Committee or sub-committee as is empowered by or under this Act to deal, and every such

requisition shall be complied with by the Committee or sub-committee, as the case may be, without unreasonable delay.

122. Power of the Mahapalika to require Mukhya Nagar Adhikari to produce documents and furnish returns, reports, etc.—(1) The Mahapalika or the Executive Committee may at any time require the Mukhya Nagar Adhikari—

- (a) to produce any record, correspondence, plan or other document which is in his possession or under his control as Mukhya Nagar Adhikari or which is recorded on files in his office or in the office of any Mahapalika officer or servant subordinate to him ;
- (b) to furnish any return, plan, estimate, statement, account or statistics concerning or connected with any matter appertaining to the administration of this Act or the municipal administration of the City ;
- (c) to furnish a report by himself or to obtain from any officer subordinate to him and furnish, with his own remarks thereon, a report, upon any subject concerning or connected with the administration of this Act or the municipal administration of the City.

(2) The Mukhya Nagar Adhikari shall comply with every such requisition unless in his opinion immediate compliance therewith would be prejudicial to the interest of the Mahapalika or of the public, in which case he shall make a declaration in writing to that effect and shall if required by the Mahapalika or the Executive Committee refer the question to the Nagar Pramukh whose decision shall be final.

123. Exercise of powers to be subject to sanction by Mahapalika of the necessary expenditure.—The exercise by any Mahapalika authority of any power conferred or the performance of any duty imposed by or under this Act which will involve expenditure shall, except where it is expressly provided otherwise by or under this Act, be subject to the conditions that—

- (a) such expenditure, so far as it is to be incurred in the financial year in which such power is exercised or duty performed, is provided for under a budget grant, and
- (b) if the exercise of such power or the performance of such duty involves or is likely to involve expenditure for any period or at any time after the close of the said financial year, the sanction of the Mahapalika is taken before the liability for such expenditure is incurred.

124. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of foregoing power such rules may provide for -

- (a) the manner of approval of the description and position of boundary marks under clause (i) of Section 114 ;
- (b) the manner and the procedure relating to the discharge of duties or fulfilment of obligations referred to in Sections 114 and 115, in cases for which no specific provision has been made in the Act ;

- (c) the procedure relating to the exercise of powers of superintendence by the Executive Committee of the municipal administration of the City ;
- (d) the manner in which the Executive powers shall be exercised by the Mukhya Nagar Adhikari ;
- (e) the matters relating to the duties, supervision and control of the Mahapalika Officers and servants referred to in clause (a) of sub-section (6) of Section 117 ;
- (f) the decision of doubts and disputes about functions of officers and servants subordinate to the Mukhya Nagar Adhikari ;
- (g) the matters relating to the delegation of powers of the Mukhya Nagar Adhikari to any other officer under Section 119 and sub-section (2) of Section 120 ;
- (h) the procedure relating to the delegation of his powers by the Mukhya Nagar Adhikari under sub-section (2) of Section 120 ;
- (i) the manner in which requisition for production of extracts from proceedings or other documents or papers, etc., shall be made under Sections 121 and 122 ;
- (j) the procedure relating to the compliance of such requisition ;
- (k) the manner in which the question regarding production of documents or other papers under sub-section (1) of Section 122 shall be referred to the Nagar Pramukh for final decision ;
- (l) the manner in which declaration of the Mukhya Nagar Adhikari under sub-section (2) of Section 122 shall be communicated to the Mahapalika ;
- (m) the guidance generally of the Mahapalika or the Mukhya Nagar Adhikari in any matter connected with the discharge of their duties or performance of their functions or exercise of their powers under this Chapter ; and
- (n) the matters which are to be or may be prescribed under this Chapter.

Comments

Rules framed.—The State Government has framed rules with reference to this Section regarding matters enumerated in Sub-clause (2) (c), (d), (g), (h), (i), (j), (k), (l) and (m), vide notification dated 15th January, 1950 printed at the end of this Book.

CHAPTER VI

Property and contracts

125. Powers of Mahapalika as to acquisition and holding of property.—(1) The Mahapalika shall, for the purposes of this Act, have power to acquire, hold and dispose of property or any interest therein whether within or without the limits of the City.

(2) All property and interests in property acquired by the Mahapalika shall vest in the Mahapalika for the purposes of this Act and subject to its provisions.

(3) Any immovable property which may be transferred to the Mahapalika by the Government shall be held by it, subject to such conditions including resumption by the Government on the occurrence of a specified contingency and shall be applied to such purposes as the Government may impose or specify while making the transfer.

126. Succession to property, assets, rights, liabilities and obligations in certain cases.—(1) As from the appointed day [and subject to any directions of the State Government in this behalf.]¹

(a) all property, interests in property and assets including cash balances, wherever situate which immediately before such day were vested in any Municipal Board, Improvement Trust or other local authority established for the area included in the City or any part of such area or in any local authority having jurisdiction both within and outside such area shall, 2[* * * *] vest in and be held by the Mahapalika of such City, for the purposes of this Act, and

(b) all rights, liabilities and obligations of the aforesaid Municipal Board, Improvement Trust or other local authority [in relation to the area included in the City]³ whether arising out of any contract or otherwise, existing immediately before such day shall be the rights, liabilities and obligations of such Mahapalika.

(2) Where any doubt or dispute arises as to whether any property, interest on asset has vested in a Mahapalika under sub-section (1) or any rights, liabilities or obligations have become the rights, liabilities or obligations of a Mahapalika such doubt or dispute shall be referred by the Mukhya Nagar Adhikari to the State Government whose decision shall unless superseded by any decision of a court of law be final.

Comments

Analogous Law—Section 116 of the U. P. Municipalities Act.

Ownership of the Mahapalika—Scope—In the corresponding provision of the U. P. Municipalities Act, as contained in Section 116, it is provided that all lands, etc., situate within the limits of a Municipality, shall vest in and belong to that Municipality. Now this Adhiniyam provides in this section that all such properties vesting in and belonging to the Municipality or local authority shall vest in and belong to the Mahapalika and it shall further have the rights, obligations, etc., of a Municipality or local authority, vest into it.

A public way which has no trace of its original ownership is presumed under law to have been dedicated by its owner to the public at large if there is no evidence otherwise and its ownership thus vests in the Municipality or a local authority as the case may be.

A well and the land attached to it stands on the same footing, in absence of any claim of ownership otherwise, as a public street or passage.

1. Ins. by S. 6 of U. P. Act XIV of 1959.

2. The words "unless otherwise directed by the State Government" deleted by *ibid.*

3. Ins. by S. 6 (iii) of U. P. Act XIV of 1959.

which is dedicated by its owner for public use, vide *Zahuruddin v. Chimman Lal*¹.

But such vesting of ownership in the Municipality or the local authority cannot be in the nature of a trust but it is an exclusive and absolute ownership unless a trust has been specifically created therefor, vide *Zahuruddin v. Chimman Lal*¹.

In respect of such vested properties, the public does not retain any say but it is the Mahapalika which can at any moment stop the public and even the dedicator of the land from its use and the public in such cases has only the legal remedy provided under Section 537 of this Adhiniyam by means of approach to the State Government which has the power to suspend any action of the Mahapalika, See Headnote "Resolution passed—No remedy with public against it—Only State can suspend action" under Section 537 in this Book.

127. Certain provisions governing acquisition of property.—

(1) All acquisitions of property shall be made by the Mukhya Nagar Adhikari on behalf of the Mahapalika.

(2) Wherever it is provided that the Mukhya Nagar Adhikari may acquire or wherever it is necessary or expedient for any purpose of this Act that the Mukhya Nagar Adhikari shall acquire any movable or immovable property within or without the City or any interest in such property, the same may be acquired by the Mukhya Nagar Adhikari, whether by agreement or otherwise :

Provided that—

(a) the Mukhya Nagar Adhikari shall be bound by any resolution of the Executive Committee fixing terms, rates or maximum prices for a particular case or for any class of cases ;

(b) the sanction of the Executive Committee shall be required—

(i) for the compulsory acquisition of any property,

(ii) for the exchange of any immovable property,

(iii) for the taking of any property on lease for a term exceeding twelve months, or

(iv) for the acceptance of any gift or bequest of property burdened by an obligation, and

(c) the sanction of the Mahapalika shall be required—

(i) for the acceptance or acquisition of any immovable property, if the value of the property which it is proposed to accept, acquire or give in exchange, exceeds five thousand rupees,

(ii) for the taking of any property on lease for a term exceeding three years, or

(iii) for the acceptance of any gift or bequest or property burdened by an obligation if the value of such property exceeds five thousand rupees,

128. Power to dispose of property.—(1) The Mahapalika shall, for the purposes of this Act, and subject to the provisions thereof and rules made

thereunder, have power to sell, let on heir, lease, exchange, mortgage, grant or otherwise dispose of any property or any interest therein acquired by or vested in the Mahapalika under this Act :

Provided that no property transferred to the Mahapalika by the Government shall be sold, let on hire, exchanged or mortgaged or otherwise conveyed in any manner contrary to the terms of the transfer except with the prior sanction of the State Government.

129. Provisions governing disposal of property.—With respect to the disposal of property belonging to the Mahapalika the following provision shall have effect, namely :

- (1) Every disposal of property belonging to the Mahapalika shall be made by the Mukhya Nagar Adhikari on behalf of the Mahapalika.
- (2) The Mukhya Nagar Adhikari may, in his discretion, dispose of by sale, letting out on hire or otherwise, any movable property belonging to the Mahapalika not exceeding in value in each instance five hundred rupees or such higher amount as the Mahapalika may, with the approval of the State Government, from time to time determine, or grant a lease of any immovable property belonging to the Mahapalika including any right of fishing or of gathering and taking fruit, and the like, for any period not exceeding twelve months at a time :

Provided that the Mukhya Nagar Adhikari shall report to the Executive Committee every lease of immovable property within fifteen days of the grant thereof unless it is a contract for a monthly tenancy or the annual rent thereof does not exceed three thousand rupees.

- (3) The Mukhya Nagar Adhikari may with the sanction of the Executive Committee dispose of by sale, letting out on hire or otherwise any movable property belonging to the Mahapalika, of which the value does not exceed five thousand rupees ; and may with the like sanction grant a lease of any immovable property belonging to the Mahapalika, including any such right as aforesaid, for any period exceeding one year or sell or grant a lease in perpetuity of any immovable property belonging to the Mahapalika the value or premium whereof does not exceed fifty thousand rupees or the annual rental whereof does not exceed three thousand rupees.
- (4) the Mukhya Nagar Adhikari may with the sanction of the Mahapalika lease, sell, let out on hire or otherwise convey any property, movable or immovable, belonging to the Mahapalika.
- (5) ¹[The consideration for which any immovable property, or any right, title or interest therein belonging to the Mahapalika may be sold, leased or otherwise transferred shall not be less than the current market value thereof :

Provided that in the case of lease or sale of land for educational, cultural or charitable purposes in favour of a society registered under the Societies Registration Act, 1161 or a statutory cor-

1. Subs. by U. P. Act XXII of 1961 again subs. by U. P. Act No. XXI of 1964.

poration a concession not exceeding half the annual rental value in the case of lease or half the total market value in any other case may be allowed subject to the condition that the total value of the concession so allowed does not exceed ten-thousand rupees :

Provided further that a concession exceeding the limits specified in the last preceding proviso may be allowed by the Mahapalika with the prior approval of the State Government.

Explanation.—If any question arises as to the value of a proposed concession or as to whether the purpose of a proposed transfer is an educational, cultural or charitable purpose, the decision of the State Government shall be binding on the Mahapalika.]

(6) the sanction of the Executive Committee or of the Mahapalika under sub-section (3) or sub-section (4) may be given either generally or any in class of cases or specially in any particular case.

(7) The aforesaid provisions of this section and the provisions of the rules shall apply to every disposal of property belonging to the Mahapalika made under or for any purposes of this Act.

¹[129-A.—**Application of Chapter VII of U. P. Act No. 1 of 1966 to Mahapalika premises.**—The provisions of Chapter VII of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, shall apply in relation to any premises belonging to or vesting in the Mahapalika or taken on lease by the Mahapalika for the purposes of this Act as they apply in relation to 'Board premises' as defined in the Act, and the references therein to —

(a) the Board ;

(b) the prescribed authority ;

(c) the Tribunal ; and

(d) matters prescribed under that Act shall respectively be construed as reference to—

(a) the Mahapalika ;

(b) the District Magistrate, including any Magistrate of the first class or Assistant Collector of the first class authorised by him by general or special order in that behalf ;

(c) the Tribunal constituted under section 371 ; and

(d) matters prescribed under this Act.]

130. Procedure when immovable property cannot be acquired by agreement.—(1) Whenever the Mukhya Nagar Adhikari is unable under Section 127 to acquire by agreement any immovable property or any easement affecting any immovable property vested in the Mahapalika or whenever any immovable property or any easement affecting any immovable property vested in the Mahapalika is required for the purposes of this Act, the State Government may, in its discretion, upon the application of the Mukhya Nagar Adhikari, made with the approval of the Executive Committee and subject to the other provisions of this Act, order proceedings to be

taken for acquiring the same on behalf of the Mahapalika, as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894, or other law which may be applicable to the case.

(2) Whenever an application is made under sub-section (1) for the acquisition of land for the purpose of providing a new street or for widening or improving an existing street it shall be lawful for the Mukhya Nagar Adhikari to apply for the acquisition of such additional land immediately adjoining the land to be occupied by such new street or existing street as is required for the sites of buildings to be erected on either side of the street, and such additional land shall be deemed to be required for the purposes of this Act.

(3) This section does not apply to the acquisition under Chapter XIV.

Comments

Scope.—The normal rule which the provisions of Section 365 are an exception is that when property is required to be acquired for the purposes of implementing a scheme by a Mahapalika the latter has to approach the State Government and the State Government may for the benefit of the Mahapalika acquire the property as if it was acquiring it for itself and for a public purpose. The sub-section (3) clearly lays down that the provisions of chapter 14 (which includes Section 365, and 366) are out of the scope of this Section 130. See *Mohammad Amir v. Nagar Mahapalika, Lucknow*.¹

131. Powers of Mahapalika to the making of contracts.—Subject to the provisions of this Act, the Mahapalika shall have power to enter into contracts which may be necessary or expedient under or for any purposes of this Act.

132. Certain provisions relating to the execution of contracts.—
(1) All contracts referred to in Section 131 including contracts relating to the acquisition and disposal of immovable property or any interest therein made in connexion with the affairs of the Mahapalika under this Act, shall be expressed to be made, for and on behalf of the Mahapalika, and all such contracts and all assurances of property made in exercise of that power shall be executed, for and on behalf of the Mahapalika, by the Mukhya Nagar Adhikari or by such other officer of the Mahapalika as may be authorized in writing by the Mukhya Nagar Adhikari either generally or for any particular case or class of cases.

(2) No contract for any purpose, which in accordance with any provisions of this Act or any rules made thereunder the Mukhya Nagar Adhikari may not carry out without the sanction of one of the other Mahapalika authorities, shall be made by him unless such sanction has been given.

(3) No contract involving an expenditure exceeding ten thousand rupees and not exceeding fifty thousand rupees shall be made by the Mukhya Nagar Adhikari unless it has been sanctioned by the Executive Committee.

(4) No contract involving an expenditure exceeding fifty thousand rupees shall be made by Mukhya Nagar Adhikari unless it has been sanctioned by the Mahapalika.

(5) Every contract made by the Mukhya Nagar Adhikari involving an expenditure exceeding one thousand rupees and not exceeding ten thousand rupees shall be reported to the Executive Committee within fifteen days after it has been made.

(6) The foregoing provisions of this section shall apply to every variation or discharge of a contract as well as to an original contract.

Comments

Analogous law—Section 95 of the U. P. Municipalities Act.

Contract in writing but provisions of this section not complied with—Claim can still be enforced—See Headnote "contract in writing but violating Section 132" under Section 133 in this commentary and other Headnotes under that section.

133. Manner of execution.—(1) Every contract entered into by the Mukhya Nagar Adhikari on behalf of the Mahapalika shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged :

Provided that—

- (a) the common seal of the Mahapalika shall be affixed to every contract which, if made between private persons, would require to be under seal, and
- (b) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding two thousand and five hundred rupees shall be in writing, shall be sealed with the seal of the Mahapalika and shall specify—
 - (i) the work to be done or the materials or goods to be supplied as the case may be ;
 - (ii) the price to be paid for such work, materials, or goods ; and
 - (iii) the time or times within which the contract or specified portion thereof shall be carried out.

(2) The common seal of the Mahapalika shall remain in the custody of the Mukhya Nagar Adhikari and shall not be affixed to any contract or other instrument except in the presence of a Sabhasad or a Vishistha Sadasya, who shall attach his signature to the contract or instrument in token that the same was sealed in his presence.

(3) The signature of the said Sabhasad or a Vishistha Sadasya shall be distinct from the signature of any witness to the execution of such contract or instrument.

(4) No contract executed otherwise than as provided in the section shall be binding on the Mahapalika.

Comments

Analogous law—See Section 97 of the U. P. Municipalities Act.

Contract in writing.—In a public auction, the various bidders give their bids which may be called offers and the moment the auctioneer knocks the hammer down at a particular bid that bid is to be taken as accepted between the parties. It is the knock of the hammer which concludes the contract. The list of bidders is the only evidence of the contract showing that out of various offers, highest bid was accepted. Where the list of bidders bears the signature of the highest bidder and of the Chairman and the Executive Officer of a Municipal Board and it was subsequently accepted by the said Board as

well, it was held by the Supreme Court that the said list and the Resolution of that Board accepting that bid constituted a contract in writing within the meaning of Section 97 of the Municipalities Act corresponding to Section 133 of this Adhiniyam, vide *B. C. Mohindra v. M. B. Saharanpur*¹ placing reliance on another Supreme Court case—*Union of India v. Rallia Ram*² where it was held that for the purpose of Section 175(3) of the Government of India Act, 1935, a valid contract could be spelt out of correspondence and similarly it was further held that it was not necessary for the purpose of complying with Section 97 of the Municipalities Act that the contract should be contained in one document signed by both the parties.

However, it cannot be urged that unless a complete list of all the detailed items of work to be done during a particular period, within which a contract requires to be work done, is given in written agreement, there is no 'contract in writing' as required by law, vide *Municipal Board, Agra v. Babu Ram Lal*.³

Even this cannot be urged that all the individual items in a contract need be independently sanctioned by the Authority failing which there would be no contract as required under law, vide *Municipal Board, Agra v. Babu Ram Lal*.³

But the contract must be sanctioned before the expiry of the term of the contract otherwise it would become illegal, vide *Madura Municipality v. Alagirisami*.⁴

Contract in writing but violating Section 132—Contractor can still claim compensation for the work done.—Where itemwise works as are required to be done in a contract are not individually sanctioned according to Section 132 of this Adhiniyam (analogous to Section 96 of the Municipalities Act) still the principle of 'quantum meruit' under Sections 65 and 70 contract Act would be applicable and the Mahapalika would be bound to compensate the contractor if payment being invalid cannot be made to him, vide *Municipal Board, Agra v. Babu Ram Lal*.³ Section 65 of the Contract Act applies to a case in which an agreement entered into by a statutory body is invalid by reason of non-observance of statutory provision with regard to the execution of contracts, but does not apply when those provisions refer to the capacity of the statutory body to enter into an agreement, vide *Gonda Municipality v. Bachhu*.⁵

It was held in *Gonda Municipality v. Bachhu*⁵ that Section 97 of the U. P. Municipalities Act, analogous to the present section of the Adhiniyam, does not refer to the capacity of a Municipal Corporation to enter into an agreement and as such, non-compliance with its provisions, does not render Section 65 of the Contract Act inapplicable. It was so held in an earlier case *Municipal Board, Lucknow v. S. C. Deb*⁶ as well. For other aspects of Section 65, Contract Act, see *Madura Municipality v. Alagirisami*.⁴

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1. (1970) A. L. J. 570 (573) (S. C.).
 2. (1964) 3 S. C. R. 161 (173).
 3. A. I. R. 1936 All. 723 (730) (D. B.).
 4. A. I. R. 1939 Madras 957 (959) (D. B.).
 5. A. I. R. 1951 All. 736 (745) (F. B.).
 6. A. I. R. 1932 Oudh 193 (194) (F. B.).

To make certain modification in sub-sections (2) and (3) of Section 133 the Government had issued the following notifications :—

Notifications

English translation of Nagar Mahapalika Notification No. 1345-A/XI-Kha-4k-1 (1)-66, dated 1st October, 1966, published in *U. P. Gazette*, Part 1-Ka, dated October 15, 1966, p. 2739.

Whereas the State Government considers it necessary and desirable to make certain modification in sub-sections (2) and (3) of Section 133 of the U. P. Nagar Mahapalika Adhiniyam, 1959.

Now, therefore, in exercise of power under clause (e) of Section 2 of the U. P. Nagar Mahapalika (Alpakalik Vyavastha) Adhiniyam, 1966 (U. P. Act No. IV of 1966), the Governor of Uttar Pradesh is pleased to make the following modification in sub-sections (2) and (3) of Section 133 of the aforesaid Adhiniyam (U. P. Act No. II of 1959), which would remain effective for so long as the administrators appointed by the State Government under clause (b) of Section 2 of the said U. P. Act No. IV of 1966, continue :

Modification

In Section 133 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 :

- (i) in sub-section (2) for the words “a Sabhasad or a Vishishta Sadasya” the following shall be *substituted*—

“the administrator appointed by the State Government under clause (b) of Section 2 of the Uttar Pradesh Nagar Mahapalika (Alpakalik Vyavastha) Adhiniyam, 1966 (U. P. Act No. IV of 1966).”

- (ii) in sub-section (3) :

for the words, “Sabhasad” or “Vishishta Sadasya”, the words, “the Administrator” shall be *substituted*.

134. Execution of works.—The Mahapalika may determine either generally for any class of cases or specially for any particular case whether the Mukhya Nagar Adhikari shall execute the work by a contract or otherwise.

135. Estimates not exceeding rupees fifty thousand—The Mukhya Nagar Adhikari may sanction any estimate the amount of which does not exceed fifty thousand rupees :

Provided that if the amount of the estimate exceeds ten thousand rupees, the sanction of the Executive Committee shall also be required.

136. Estimates exceeding rupees fifty thousand.—(1) Where a project is framed for the execution of any work or series of works the entire estimated cost of which exceeds fifty thousand rupees—

- (a) the Mukhya Nagar Adhikari shall cause a detailed report to be prepared including such estimates and drawings as may be requisite and forward the same to the Executive Committee who shall submit the same before the Mahapalika with its suggestions, if any ;
- (b) the Mahapalika shall consider the report and the suggestions and may reject the project or may approve it either in its entirety or subject to modifications.

(2) (a) Where the Mahapalika approves the project and the entire estimated cost exceeds five lakhs of rupees, the report, subject to any modifications as aforesaid, shall be submitted to the State Government.

(b) the State Government may reject the project or may sanction it either in its entirety or subject to modifications.

(c) The work shall not be commenced before the project has been sanctioned by the State Government with or without modifications.

(d) No material change in the project sanctioned as aforesaid shall be carried into effect without the sanction of the State Government.

Explanation.—In this section and in Section 135 the expression “estimate” means the total estimate for the whole of a project including the whole of the series of transactions constituting the project.

137. Powers of Mahapalika to enforce covenants against owner for the time being of land.—A covenant concerning any immovable property for the purposes of this Act entered into with the Mahapalika by the owner of such property or by any person to whom such property of the Mahapalika has been transferred by sale or exchange shall be enforceable by the Mahapalika against any person deriving title under the covenant notwithstanding that the Mahapalika is not in possession of, or interested in any immovable property for the benefit of which the covenant was entered into, in the like manner and to the like extent as if it had been possessed of or interested in such property.

138. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for—

- (a) the procedure for ascertaining the property and assets to be vested in the Mahapalika under clause (a) of sub-section (1) of Section 126 ;
- (b) the procedure for ascertaining the rights, liabilities and obligations of the Mahapalika under clause (b) of sub-section (1) of Section 126 ;
- (c) the procedure in general for the purchase or acquisition of the property, for and on behalf of the Mahapalika, or sale, lease, hire, exchange, grant or disposal of the property vested in or acquired by the Mahapalika ;
- (d) the terms and the rates at which any immovable property may be purchased or acquired by agreement for the Mahapalika ;
- (e) the payment of the expenses and the compensation awarded and other charges incurred for the compulsory acquisition of property for and on behalf of the Mahapalika ;
- (f) the procedure relating to entering into contracts ;
- (g) the manner in which contracts may be executed ;
- (h) the security to be demanded for the due performance of contracts ;
- (i) the preparation and sanctioning of detailed plans and estimates for works and the calling, examination and acceptance of tenders ;

- (j) the execution of works and conditions of sanction ;
- (k) the matters which are to be or may be prescribed.

CHAPTER VII

Mahapalika and other Funds

139. Constitution of Mahapalika and other funds.—(1) There shall be established a Fund for each Mahapalika, hereinafter called the Mahapalika Fund, and, subject to the provisions of this Act and the rules made thereunder, there shall be placed at the credit thereof all moneys received by or on behalf of the Mahapalika under this Act or any other law, or contract, including—

- (a) the proceeds of the property of the Mahapalika ;
- (b) the rents of the property of the Mahapalika ;
- (c) the proceeds of all taxes or fees and fines (other than fines imposed by a court), levied by or under this Act ;
- (d) all moneys received by way of compensation or for compounding offences under the provisions of this Act ;
- (e) all interest and profits arising from any investment of, or from any transaction in connexion with, any money belonging to the Mahapalika ;
- (f) all moneys received by or on behalf of the Mahapalika from the Government or public bodies, private bodies or other persons by way of grant, gift or deposit, subject, however, to the conditions, if any, attached to such grant, gift or deposit.

(2) All moneys payable to the credit of the Mahapalika Fund shall be received by the Mukhya Nagar Adhikari and shall forthwith be paid into the State Bank of India ¹[or with the previous sanction of the State Government into the U. P. Co-operative Bank or such other scheduled bank or banks as the Mahapalika may appoint,] to the credit of an account which shall be styled "the account of the Mahapalika Fund of" :

Provided that the Mukhya Nagar Adhikari may, subject to any general or special directions issued by the Executive Committee, retain such balances in cash as may be necessary for current payments.

(3) The Mahapalika ²[shall constitute a Development Fund and] may also constitute such special funds as may be prescribed and such other funds as may be necessary for the purposes of this Act. The constitution and disposal of such funds shall be effected in the manner prescribed.

140. Purposes for which Mahapalika Fund is to be applied.—The moneys from time to time credited to the Mahapalika Fund shall be applied in the following order of preference :

Firstly, in making due provision for the repayment of all loans payable by the Mahapalika under the provisions of Chapter VIII ;

Secondly, in discharge of all liabilities imposed on the Mahapalika by clause (b) of sub-section (1) of Section 126 ;

1. Subs. by U. P. Act XXI of 1964.

2. Subs. by U. P. Act XXII of 1961.

Thirdly, in payment of all sums, charges and costs necessary for the purposes specified in Sections 114 and 115, and for otherwise carrying this Act into effect, or of which the payment shall be duly sanctioned under any of the provisions of this Act inclusive of—

- (a) the cost of auditing the Mahapalika accounts ;
- (b) the expenses of every election held under this Act ;
- (c) the salaries, allowances and contributions to pensions and leave salaries of the Mukhya Nagar Adhikari and of any other officer whose services may at the request of the Mahapalika be placed by the State Government at the disposal of the Mahapalika ;
- (d) the salaries and allowances of Mahapalika officers and servants, and all pensions, gratuities, contributions and compassionate allowances payable under the provisions of this Act ;
- (e) the salaries and fees of experts for service or advice in connexion with any matter arising out of the administration or undertaking of the Mahapalika ;
- (f) all expenses and costs incurred by the Mahapalika or by any Mahapalika officer on behalf of the Mahapalika in the exercise of any power conferred, or the discharge of any duty imposed on it or them by this Act, including moneys which the Mahapalika is required or empowered to pay by way of compensation ;
- (g) every sum payable—
 - (i) by order of the State Government or under an award made under the Arbitration Act, 1940, or a decree or order of a Civil Court, as the case may be ;
 - (ii) under a decree or order of a civil or criminal court passed against the Mukhya Nagar Adhikari ;
 - (iii) under a compromise of any suit or other legal proceeding or claim ;
- (h) contributions to public institutions which the State Government may, after consulting the Mahapalika, declare to be in the interest of the inhabitants of the City.

141. Temporary payments from Mahapalika Fund for works urgently required for public service.—(1) On the written requisition of the State Government or the Prescribed Authority the Mukhya Nagar Adhikari may at any time undertake the execution of any work certified by the State Government or such authority as the case may be, to be urgently required for a work of public utility and for this purpose may make payments from the Mahapalika Fund so far as the same can be made without unduly interfering with the regular working of the municipal administration.

(2) On receipt of requisition under sub-section (1) the Mukhya Nagar Adhikari shall forthwith forward a copy thereof to the Mahapalika together with a report of the action taken by him thereon for its information.

(3) The cost of all work executed under sub-section (1) and of the establishment engaged in executing the same shall be paid by the State Government and credited to the Mahapalika Fund.

142. Maintenance and audit of accounts.—(1) The account of the receipt and expenditure of the Mahapalika shall be maintained in such manner as may be prescribed.

(2) The Mukhya Nagar Lekha Parikshak shall conduct a monthly examination and audit of the Mahapalika accounts, and shall within a month report thereon to the Executive Committee who shall publish monthly an abstract of the receipts and expenditure of the month last preceding, signed by not less than two members of that committee and by the Mukhya Nagar Lekha Parikshak.

(3) The Executive Committee may also from time to time and for such period as they think fit conduct independently an examination and audit of the Mahapalika accounts.

143. Special Audit.—The State Government may at any time direct special examination and audit of Mahapalika accounts for such period as they think fit by auditors appointed by the State Government in that behalf and a report of such examination and audit shall be submitted by the said auditors to the State Government.

144. Auditors to have access to all the Mahapalika accounts and to all records, etc.—(1) For the purposes of examination and audit of accounts under Section 142 or 143 the Mukhya Nagar Lekha Parikshak and the auditors appointed under Section 143 shall have access to all the Mahapalika accounts and to all records and correspondence relating thereto and the Mukhya Nagar Adhikari shall forthwith furnish to the said auditors or to the Executive Committee any explanation concerning receipts and disposal which they may call for.

(2) All charges, fee and expenses necessary for the examination and audit of accounts under these sections shall be paid by the Mahapalika.

145. Preparation of annual administration report and statement of accounts.—(1) The Mukhya Nagar Adhikari shall, as soon as may be after the first day of April in each year, have prepared a detailed report of the Mahapalika administration of the City, during the previous official year, together with a statement showing the accounts of the receipts and disbursements credited and debited to the Mahapalika Fund during the said year and the balance at the credit of the Fund at the close of the said year and shall submit the same to the Executive Committee.

(2) The report shall be in such form and shall contain such information as the Executive Committee may from time to time direct.

(3) The Executive Committee shall then examine the report and the statement, and a copy of the said statement together with a copy of the Committee's review shall be forwarded to the State Government and to each member and copies thereof shall also be placed on sale at the Mahapalika office.

146. Budgets.—(1) The Mukhya Nagar Adhikari shall, on or before the tenth day of December each year, in the case of indebted Mahapalikas and tenth day of January each year in the case of other Mahapalikas cause to be prepared and laid before the Executive Committee in such form as may be prescribed and in such manner as the Executive Committee may approve budget estimates of the income and expenditure of the Mahapalika Fund for the next financial year.

(2) Such estimates shall—

- (a) take into account, loans and grants from Government ;
- (b) provide for the repayment of all loans including loans taken from Government with interest due thereon, for the repayment of which the Mahapalika is liable ;
- (c) provide for the discharge of liabilities imposed on the Mahapalika by clause (b) of sub-section (1) of Section 126 ;
- (d) provide for the payment in convenient instalments or lump sum from the Mahapalika fund of an amount equal to the grant assigned for education ;
- (e) allow for a cash balance at the end of the said year of not less than such sum as may be prescribed by the State Government ;
- (f) provide for a sum of money not exceeding five thousand rupees to be spent by the Nagar Pramukh in his discretion on any one or more of the matters specified in Section 114 or 115.

(3) The Executive Committee shall, on or as soon as may be after the tenth day of December or January, as the case may be, consider the budget estimates prepared by the Mukhya Nagar Adhikari and make such modifications thereto as it shall think fit and submit the same to the Mahapalika not later than the fifteenth day of January following in the case of indebted Mahapalikas and the fifteenth day of February in other cases.

(4) The Mahapalikas shall finally adopt the budget estimates before March 1, if it is an indebted Mahapalika and before the beginning of the year to which they relate if it is not an indebted Mahapalika and shall forthwith submit copies thereof to the State Government :

Provided that if for any reason the Mahapalika has not finally adopted the budget estimates before the commencement of the financial year to which they relate, the budget estimates as prepared by the Mukhya Nagar Adhikari or if the Executive Committee has submitted budget estimates under sub-section (3), such budget estimates shall be deemed to be the budget estimates for that year until action has been taken by the Mahapalika :

Provided further, that in the case of an indebted Mahapalika the adoption of budget estimates under this sub-section shall be subject to confirmation by the State Government.

147 Revised Budget Estimates.—As soon as may be after the first day of September if it is an indebted Mahapalika and the first day of October if it is not an indebted Mahapalika revised budget estimates for the year shall be adopted by the Mahapalika and the revised estimate shall, as far as may be, but subject to the modifications mentioned herein, be subject to all the provisions of Section 146.

Modifications—

- (i) In sub-sections (1) and (3) of Section 146 for “tenth day of December” and “tenth day of January”, “tenth day of August” and “tenth day of September”, shall respectively be deemed to be substituted ;
- (ii) In sub-section (3) of Section 146 for “fifteenth day of January” and “fifteenth day of February”, “fifteenth day of August” and

"fifteenth day of September" shall respectively be deemed to be *substituted*, and

- (iii) For the first proviso at the end of the section the following proviso shall be deemed to be *substituted* ;

"Provided that as long as the Mahapalika has not adopted the revised budget estimates the budget estimates in force under the provisions of this Act on the first day of October of the year in question shall subject to the provisions of Sections 149 and 151 remain the budget estimates for the year."

148. Determination of rates of taxes.—The Mahapalika shall, on or before February 15 if it is an indebted Mahapalika but on or before March 15 otherwise, after considering the proposal of the Executive Committee, determine, subject to the limitations and conditions prescribed in Chapter IX the rates at which Mahapalika taxes referred to in sub-section (1) of Section 172 shall be levied in the next ensuing financial year.

Comments

Power given to the Mahapalika to determine rates of tax—Whether it is delegation of essential legislative power by the Legislature to the Mahapalika—Whether provision void—No—A question arises whether the State Legislature had delegated essential legislative power to the Mahapalika under Section 148 of the Adhiniyam to determine the rate of tax. It is urged that the provision in the proviso to Section 173 (2) of the Adhiniyam (declaring that the aggregate of the property taxes shall not be less than 15 per cent nor more than 25 per cent of the annual value) does not provide sufficient norms and limitations governing the determination of the rates of the property taxes. Reliance has been placed upon the decision of the Supreme Court in *M/s Devi Das Gopal Krishnan v. State of Punjab*¹. In their Lordships opinion that decision could not govern the instant case. In the case of a Municipal corporation the position is very different from the case which was considered by the Supreme Court in *M/s Devi Das Gopal Krishnan*.¹ The levy of a tax by a Municipal Corporation was considered by the Supreme Court in the *Corporation of Calcutta v. Liberty Cinema*² and this case was distinguished by the Supreme Court when deciding *M/s Devi Das Gopal Krishnan's* case. Since then the Supreme Court has held in *Municipal Corporation of Delhi v. Birla Cotton Spinning & Weaving Mills, Delhi*,³ that there is no delegation of essential legislative power so long as the Legislature has made provision to achieve that reasonable rates of taxes are fixed by local bodies and if the method employed is sufficient to serve as an effective guidance for the purposes of fixing the rates of taxes. The circumstances, it is said, which must be taken into account, are that the delegation has been made to an elected body responsible to the people including those who pay taxes, the Corporation has been assigned certain obligatory functions which it must perform and for which it must find money by taxation and the power of the court to function as a check on the power of the Corporation if the act of such a body is void for unreasonableness. Upon these considerations it was held in *M. P. Sugar Mills v. Kanpur Municipality*⁴ that the contention that the essential legislative power has been delegated must be rejected.

1. A. I. R. 1967 S. G. 1895.

2. A. I. R. 1965 S. G. 1107.

3. A. I. R. 1968 S. G. 1232.

4. A. I. R. 1969 All. 393 (338) (D. B.).

149. Mahapalika may increase amount of budget, grants and make additional grants.—(1) On the recommendation of the Executive Committee the Mahapalika may, from time to time during a financial year, increase the amount of any budget grant, or make an additional budget grant for the purpose of meeting any special or unforeseen requirement arising during the said year, but not so that the estimated cash balance at the close of the year exclusive of the balance, if any, of any special fund shall be reduced below the amount prescribed under clause (e) of sub-section (2) of Section 146 or such higher amount as may have been fixed for the time being in this behalf by the Mahapalika in the case of either the Mahapalika Fund or other special funds.

(2) Such increased or additional budget grants shall be deemed to be included in the budget estimates approved by the Mahapalika for the year in which they are made.

(3) Reductions in and transfers from one budget head to another or within a budget head shall be made in accordance with the rules by the Executive Committee.

150. Restrictions on expenditure from Mahapalika Fund.—Except as may be provided by rules in this behalf, no expenditure shall be incurred or payment made of any sum out of the Mahapalika Fund unless the same is covered by a current budget grant, and sufficient balance of such budget grant is still available, notwithstanding any reduction or transfer thereof which may have been made in accordance with the provisions of sub-section (3) of Section 149.

151. Alteration in budget estimates.—The Mahapalika may vary or alter from time to time as circumstances may render desirable, the budget estimates adopted under Section 146 or Section 147 :

Provided that in the case of an indebted Mahapalika every variation or alteration under this section shall be subject to confirmation by the State Government.

152. Indebted Mahapalika.—Where in the opinion of the State Government the condition of indebtedness of any Mahapalika is such as to make the control of the State Government over its budget desirable, the State Government may by order notified in the official *Gazette* declare that such is the case and such Mahapalika shall for the purposes of this Act be deemed to be an indebted Mahapalika.

¹[152-A. **Surcharge.**—(1) The Nagar Pramukh, Upa Nagar Pramukh, and every member, officer and servant of the Mahapalika shall be liable to surcharge for the loss, waste or misapplication of any money, property of the Mahapalika, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while acting as such Nagar Pramukh, Upa Nagar Pramukh, member, officer or servant.

(2) The procedure of surcharge and the manner of recovery of the amount involved in loss, waste or misapplication shall be such as may be prescribed by rules.

(3) Where no surcharge proceedings are taken the Mahapalika may with the previous sanction of the State Government institute a suit for compensation against such Nagar Pramukh, Upa Nagar Pramukh, member, officer or servant.]

153. **Power to make rules.**—The State Government may make rules to carry out all or any of the purposes of this Chapter, and in particular, without affecting the generality of the powers conferred hereby, make rules for the following purposes :

- (a) receiving of payments by the Mukhya Nagar Adhikari to the account of the Mahapalika Fund and lodging of the moneys received in a bank or banks ;
- (b) operation of the funds of the Mahapalika ;
- (c) deposit of portion of Mahapalika Fund with bank or agency outside the City ;
- (d) investment of surplus moneys ;
- (e) the accounts to be kept by the Mahapalika, the manner in which accounts shall be audited and published, the power of auditors in respect of disallowance and surcharge ; [and the]¹ ; manner in which surcharge proceedings will be undertaken ;
- (f) reductions in or transfers from one budget head to another or within a budget head ;
- (g) preparation of annual administration report and statement of accounts ;
- (h) manner of keeping of Mahapalika accounts.

CHAPTER VIII

Borrowing Powers

154. **Powers of Mahapalika to borrow money.**—(1) The Mahapalika may, with the previous sanction of the State Government and subject to the provisions of Section 31 of the Reserve Bank of India Act, 1934 from time to time, borrow or re-borrow and take up at interest by the issue of debentures or otherwise on the security of any immovable property vested in the Mahapalika or proposed to be acquired by it under this Act or of all or any taxes, duties, tolls, cesses, fees and dues which it is authorized to levy for the purposes of this Act or of all or any of those securities, any sum necessary for the purpose of—

- (a) defraying any costs, charges or expenses, incurred by it in the execution of this Act ;
- (b) for discharging any loan contracted under this Act or any other loan or debt for the repayment of which the Mahapalika is liable ;
- (c) generally for carrying out the purposes of this Act, including the advance of loans authorized thereunder :

Provided that—

- (i) no loan shall be raised for the execution of any work other than a permanent work which expression shall include any work of which the cost should, in the opinion the State Government, be spread over a term of years ;

1. Ins. by U. P. Act XXI of 1964.

(ii) no loan shall be raised unless the State Government has approved the purpose and amount of the loan, the rate of interest and other terms thereof including the date of flotation and the period and method of repayment ;

(iii) the period within which the loan is to repaid shall in no case exceed thirty years.

(2) When any sum of money has been borrowed or re-borrowed under sub-section (1)—

(a) no portion thereof shall without the previous sanction of the State Government, be applied to any purpose other than that for which it was borrowed ; and

(b) no portion of any sum of money borrowed or re-borrowed for the execution of any work shall be applied to the payment of salaries or allowances of any Mahapalika officer or servant other than those who are exclusively employed upon the work for the construction of which the money was borrowed, or for meeting expenditure of recurring nature :

Provided that such share of the cost on account of the salaries and allowances of Mahapalika officers or servants employed in part upon the preparation of plans and estimates or the construction or supervision of or upon the maintenance of the accounts of such work as the Executive Committee may fix may be paid out of the sum so borrowed or re-borrowed.

Comments

The provision of the Reserve Bank Act referred to in this section is reproduced below.

Section 31 of the Reserve Bank of India, 1934.

Issue of demand bills and notes.—(1) No person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person :

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

155. Power of Mahapalika to borrow from banks against public securities.—Notwithstanding anything contained in Section 154 but subject

to the provisions of Section 31 of the Reserve Bank of India Act, 1934, the Mahapalika may borrow for the purposes of this Act from any bank or banks in which the surplus moneys at the credit of the Mahapalika Fund may be deposited, against any public securities in which for the time being the cash balance of the Mahapalika may be invested :

Provided that in the case of an indebted Mahapalika, borrowing under this section shall be made with the previous approval of the State Government.

156. When and how loan should be repaid.—(1) Every loan raised under Section 154 shall be repaid within the time approved therefor under the said section and by such of the following methods as may be approved under the said provision, namely—

- (a) by payment from a sinking fund established under Section 157 in respect of the loan ;
- (b) by equal payments of principal and interest ;
- (c) from any sum borrowed for the purpose under clause (b) of sub-section (1) of Section 154 ;
- (d) partly from a sinking fund established under Section 157 in respect of the loan and partly from money borrowed for the purpose under clause (b) of sub-section (1) of Section 154 ;
- (e) by such other method including drawings as the State Government may specify.

(2) In the case of a loan borrowed before the appointed day, repayment shall normally be made by the method which was in operation for the repayment of such loan or if there was no such method, by any of the methods specified in sub-section (1).

157. Maintenance and application of sinking fund.—(1) Whenever the repayment of a loan from a sinking fund has been sanctioned under proviso (ii) to sub-section (1) of Section 154, the Mahapalika shall establish such a fund and shall pay into it, on such dates as may have been approved under the said proviso, such sum as will, with accumulations of compound interest, be sufficient after payment of all expenses to pay off the loan within the period approved :

Provided that if at any time the sum standing to the credit of the sinking fund established for the repayment of any loan is of such amount that, if allowed to accumulate at compound interest it will be sufficient to repay the loan within the period approved, then with the permission of the State Government further payments into such fund may be discontinued.

(2) The Mahapalika may apply a sinking fund, or any part thereof in or towards the discharge of the loan for which such fund is established, and, until such loan or part is wholly discharged, shall not apply the same for any other purpose.

158. Investment of sinking fund.—(1) All moneys paid into a sinking fund shall, as soon as possible, be invested by the Mahapalika in the name of the Mukhya Nagar Adhikari—

- (a) in Government securities, or

(b) in securities guaranteed by Government, or

(c) in debentures of the Mahapalika,

and shall be held by the Mahapalika for the purpose of repaying from time to time the debentures issued by it.

(2) All dividends, interest and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

(3) Money standing to the credit of two or more sinking funds may, at the discretion of the Mahapalika, be invested in a common fund, and it shall not be necessary for the Mahapalika to allocate the securities held in such investments among the several sinking funds.

(4) When any part of sinking funds is invested in the debentures of the Mahapalika or is applied to paying of any part of a loan before the period fixed for repayment, the interest which would, otherwise have been payable on such debentures or on such part of the loan, shall be paid into the sinking fund and invested in the manner laid down in sub-section (1).

(5) Any investment made under this section may, subject to the provisions of sub-section (1), be varied or transposed :

Provided that whenever any transposition is made by the sinking fund from which any part is transposed shall be increased by a sum equal to the sum transposed.

(6) During the year in which the loan for the repayment of which a sinking fund is established is due for repayment, the sum to be set apart as portion of the principal of such sinking fund, and the sum received on account of interest on moneys forming part of such sinking fund may be retained by the Mahapalika in such form as it thinks fit.

159. Investment of sinking fund and surplus moneys in debentures issued by Mahapalika.—(1) In respect of any sinking funds which by this Act the Mahapalika is directed or authorized to invest in Public securities and in respect of any surplus moneys which by this Act the Mukhya Nagar Adhikari on behalf of the Mahapalika is empowered to invest in the securities, it shall be lawful for the Mahapalika to reserve and set apart for the purpose of any such investment, any debentures issued or to be issued on account of any loan for which the sanction of the State Government shall have been duly obtained :

Provided that the intention so to reserve and set apart such debentures shall have been notified to the State Government as a condition of the issue of the loan.

(2) The issue of any such debentures direct, to and in the name of the Mukhya Nagar Adhikari on behalf of the Mahapalika shall not operate to extinguish or cancel such debentures, but every debenture so issued shall be valid in all respects as if issued to and in the name of any other person.

(3) The purchase by, or the transfer, assignment or endorsement to, the Mahapalika or to the Mukhya Nagar Adhikari of any debenture issued by the Mahapalika shall not operate to extinguish or cancel any such debenture, but the same shall be valid and negotiable in the same manner and

to the same extent as if held by, or transferred, assigned or endorsed, to any other person.

160. Annual examination of sinking funds.—(1) All sinking funds established or maintained under this Act shall be subject to annual examination by the Examiner, Local Fund Accounts, who shall ascertain whether the cash and the value of the securities belonging thereto are actually equal to the amount which should be at the credit of such fund, had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

(2) The amount which should be at the credit of a sinking fund shall be calculated on the basis of the present value of all future payments required to be made to such fund under the provisions of this Act, on the assumption that all investments are regularly made and the rate of interest as originally estimated is obtained therefrom.

(3) The securities belonging to a sinking fund shall be valued for the purposes of this section at their current market value, except in the case of debentures issued under this Act which will be valued at par, provided that the Mahapalika shall make good immediately any loss which may accrue on the actual sale of such debentures at the time of repayment of the loan.

(4) The Mahapalika shall forthwith pay into any sinking fund any amount which the Examiner, Local Fund Accounts, may certify to be deficient, unless the State Government specially sanctions a gradual re-adjustment.

(5) If the cash and the value of the securities at the credit of any sinking fund are in excess of the amount which should be at its credit, the Examiner, Local Fund Accounts, shall certify the amount of such excess sum and the Mahapalika may thereupon transfer the excess sum to the Mahapalika Funds.

(6) If any dispute arises as to the accuracy of any certificate made by the Examiner, Local Fund Accounts, under sub-section (4) or (5) the Mahapalika may, after making the payment or transfer, refer the matter to the State Government whose decision shall be final.

161. Attachment of Mahapalika Fund in default of repayment of loan.—(1) If any money borrowed by the Mahapalika or any interest or costs due in respect thereof are not repaid according to the conditions of the loan, the State Government, if it has itself given the loan, may, and in other cases shall, on the application of the lender after considering the explanation of the Mahapalika, if any, attach the Mahapalika Fund or a portion of the Mahapalika Fund.

(2) After such attachment no person, except an officer appointed in this behalf by the State Government shall in any way deal with the attached fund or portion thereof but such officer may do all acts in respect thereof which any Mahapalika authority, officer or servant might have done if such attachment had not taken place and may apply the proceeds in satisfaction of the arrears and of all interest and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings :

Provided that no such attachment shall defeat or prejudice any debt for which the Fund or portion thereof attached was previously pledged in accordance with law, and all such prior charges shall be paid out of the proceeds of the Fund or portion thereof before any part of the proceeds is applied

to the satisfaction of the liability in respect of which such attachment is made.

162. Form of debentures.—(1) Debentures issued under this Act shall be in such form as the Mahapalika may with the previous sanction of the State Government from time to time determine.

(2) The holder of any debenture in any form duly authorized under sub-section (1) may obtain in exchange therefor, upon such terms as the Mahapalika shall from time to time determine, a debenture in any other form so authorized.

(3) Every debenture issued by the Mahapalika under this Act shall be transferable by endorsement.

(4) The right to payment of the moneys secured by any of such debentures and to sue in respect thereof shall vest in the holder for the time being without any preference by reason of some of such debentures being prior in date to others.

163. Coupons attached to debentures to bear signature of Chairman of Executive Committee and Mukhya Nagar Adhikari.—All coupons attached to debentures issued under this Act shall be signed by the Chairman of the Executive Committee and the Mukhya Nagar Adhikari on behalf of the Mahapalika and such signatures may be engraved, lithographed or impressed by any mechanical process.

164. Debentures issued to two or more persons jointly.—Notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872—

- (1) Where any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, the debenture or security shall be payable to the survivor or survivors of such persons :

Provided that nothing in this sub-section shall affect any claim by the legal representative of a deceased person against such survivor or survivors.

- (2) When two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for an interest or dividend payable in respect of such debenture or security unless notice to the contrary has been given to the Mahapalika by any other of such persons.

Comments

Section 45 of the Contract Act.—It reads as under :

Devolution of joint rights.—When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representatives of such deceased persons jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration

A, in consideration of 5,000 rupees, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B

dies. The right to claim performance rests with *B*'s representative jointly with *C* during *C*'s life, and after the death of *C* with the representatives of *B* and *C* jointly.

165. Issue of duplicate securities.—(1) When a debenture issued under this Act is alleged to have been lost, stolen or destroyed either wholly or in part or has been defaced or mutilated and a person claims to be the person to whom but for the loss, theft, destruction, defacement or mutilation it would be payable, he may, on application to the Mukhya Nagar Adhikari, and on producing proof of his satisfaction of the loss, theft, destruction, defacement or mutilation and of the justice of the claim, obtain for him an order—

- (a) if the debenture alleged to have been lost, stolen, destroyed, defaced or mutilated is payable more than six years after the date of publication of the notification referred to in sub-section (2)—
 - (i) for the payment of interest in respect of the debenture pending the issue of a duplicate debenture; and
 - (ii) for the issue of a duplicate debenture payable to the applicant; or
- (b) if the debenture alleged to have been lost, stolen, destroyed, defaced or mutilated is payable not more than six years after the date of publication of the notification referred to in sub-section (2)—
 - (i) for the payment of interest in respect of the debenture without the issue of a duplicate debenture, and
 - (ii) for the payment to the applicant of the principal sum due in respect of the debenture on or after the date on which the payment becomes due.

(2) An order shall not be passed under sub-section (1) until after the issue of such notification of the loss, theft, destruction, defacement or mutilation of the debenture as may be prescribed by the Mahapalika, and after the expiration of such period as may be prescribed by the Mahapalika nor until the applicant has given such indemnity as may be required by the Mahapalika against the claims of all persons deriving title under the debenture lost, stolen, destroyed, defaced or mutilated.

(3) A list of the debentures in respect of which an order is passed under sub-section (1) shall be published in the official *Gazette*.

(4) If at any time before the Mahapalika becomes discharged under the provisions of Section 168 from liability in respect of any debenture the whole of which is alleged to have been lost, stolen, destroyed, defaced or mutilated, such debenture is found, any order passed in respect thereof under this section shall be cancelled but subject to any payments of principal or interest already made.

166. Renewal of debentures.—(1) A person claiming to be entitled to a debenture issued under this Act, may on applying to the Mukhya Nagar Adhikari and on satisfying him of the justice of his claim and delivering the debenture receipted in such manner and paying such fee as may be prescribed by the Mukhya Nagar Adhikari obtain a renewed debenture payable to the person applying.

(2) Where there is a dispute as to the title to a debenture issued under this Act in respect of which an application of renewal has been made, the Mukhya Nagar Adhikari may—

- (a) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such debenture, issue a renewed debenture in favour of such party ;
- (b) refuse to renew the debenture until such decision has been obtained ; or
- (c) after such inquiry as is hereinafter provided and on consideration of the result thereof declare by order in writing which of the parties is in his opinion entitled to such debenture and may, after the expiration of three months from the date of such declaration, issue a renewed debenture in favour of such party in accordance with the provisions of sub-section (1) unless within that period he has received notice that proceedings has been instituted by any person in a court of competent jurisdiction for the purpose of establishing a title to such debenture.

Explanation.—For the purposes of this sub-section the expression “final decision” means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(3) For the purposes of the inquiry referred to in sub-section (2) the Mukhya Nagar Adhikari may himself record or may request the District Magistrate to record or to have recorded by any Magistrate subordinate to him the whole or any part of such evidence as the parties may produce. The Magistrate who records the evidence shall forward the record of such evidence to the Mukhya Nagar Adhikari.

(4) The Mukhya Nagar Adhikari or any Magistrate acting under this section may, if he thinks fit, record evidence on oath.

167. Liability in respect of debenture renewed.—(1) When a renewed debenture has been issued under Section 166 in favour of any person, the debenture so issued shall be deemed to constitute a new contract between the Mahapalika and such person and all persons deriving title thereafter through him.

(2) No such renewal shall effect the rights as against the Mahapalika of any other person to the debenture so renewed.

168. Discharge in certain cases.—When a duplicate debenture has been issued under Section 165 or when a renewed debenture has been issued under Section 166 or when the principal sum due on a debenture in respect of which an order has been made under Section 165 for the payment of the principal sum without the issue of a duplicate debenture has been paid on or after the date on which such payment became due, the Mahapalika shall be discharged from all liability in respect of the debenture in place of which a duplicate or renewed debenture has been so issued or in respect of which such payment has been made, as the case may be—

- (a) in the case of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (3) of Section 165 or from the date of the last payment of interest on the original debenture, whichever date is later ;

- (b) in the case of a renewed debenture after the lapse of six years from the date of the issue thereof ; and
- (c) in the case of payment of the principal sum without the issue of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (2) of Section 165.

169. Indemnity.—Notwithstanding anything in Section 166 the Mukhya Nagar Adhikari may in any case arising thereunder—

- (1) issue a renewed debenture upon receiving such indemnity in favour of the Mahapalika and the Mukhya Nagar Adhikari as he shall think fit against the claims of all persons claiming under the original debenture, or
- (2) refuse to issue a renewed debenture unless such indemnity is given.

170. Annual statement to be prepared by Mukhya Nagar Adhikari.—(1) The Mukhya Nagar Adhikari shall, at the end of each year, prepare a statement showing—

- (a) the loans borrowed in previous years for which the Mahapalika is liable and which have not been completely repaid before the commencement of the year, with particulars of the amount outstanding at the commencement of the year, the date of borrowing and the annual loan charges ;
- (b) the loans borrowed by the Mahapalika in the year with particulars as to the amount and the date of borrowing and the annual loan charges ;
- (c) in the case of every loan for which a sinking fund is maintained the amount of accumulation in the sinking fund at the close of the year showing separately the amount to the credit of the fund in the year ;
- (d) the loans repaid in the year and, in the case of the loans repaid in instalments or by annual drawings, the amounts repaid in the year, and the balance due at the close of the year ;
- (e) the particulars of securities in which the sinking funds have been invested or reserved therefor.

(2) Every such statement shall be laid before a meeting of the Mahapalika and shall be published in the official *Gazette* and a copy of such statement shall be sent to the State Government and to the Examiner, Local Fund Accounts.

171. Power to make rules.—The State Government may make rules to carry out all or any of the purposes of this Chapter, and in particular, without affecting the generality of the power conferred hereby, make rules for the following purposes :

- (a) procedure for obtaining sanction of the State Government under this Chapter ;
- (b) establishment of sinking fund ;
- (c) investment of money in the sinking fund ;

- (d) annual examination and audit of sinking fund ;
- (e) manner of attachment of Mahapalika Fund ; and
- (f) printing of debentures.

CHAPTER IX

Mahapalika Taxation

172. Taxes to be imposed under this Act.—(1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India the Mahapalika shall impose the following taxes, namely,—

- (a) property taxes,
- (b) a tax on vehicles other than mechanically propelled vehicles, and other conveyances plying for hire or kept within the City or on boats moored therein ;
- (c) a tax on animals used for riding, driving, draught or burden, when kept within the City.

(2) In addition to the taxes specified in sub-section (1) the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely—

- (a) a tax on trades, callings and professions and holding of public or private appointments ;
- (b) an octroi on goods or animals brought within the City for consumption, use or sale therein ;
- (c) a tax on goods exported from or imported into the City in which an octroi was in force at the commencement of the Constitution of India ;
- (d) a toll on vehicles and other conveyances and animals and laden coolies entering the City ;
- (e) a tax on dogs kept within the City ;
- (f) a betterment tax ;
- (g) a tax on deeds of transfer of immovable property situated within the City ;
- (h) a tax on advertisements not being advertisements published in newspapers ;
- (i) a theatre tax ; and
- (j) any other tax which the State Legislature has the power under the Constitution of India to impose in the State :

Provided that octroi on goods under clause (b) and a tax under clause (c) shall not be levied at the same time.

(3) The Mahapalika taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution of India :

Provided that where any tax was being lawfully levied in the area included in the City immediately before the commencement of the Constitution of India such tax may continue to be levied and applied for the purposes of this Act until provision to the contrary is made by Parliament.

Comments

Analogous law.—*Sub-section (1) (b)*—Section 128 (1) (iv) of the U. P. Municipalities Act except the words “other than mechanically propelled” which have been added in the present Adhiniyam.

Sub-section (1) (c)—Section 128 (1) (vi) of the U. P. Municipalities Act.

Sub-section (2) (b)—Section 128 (1) (viii) of that Act.

Sub-section (2) (c)—Almost to Section 128 (1) (xiii) of that Act.

Sub-section (2) (d)—Section 128 (1) (vii) of that Act.

Sub-section (2) (e)—Section 128 (1) (v) of that Act.

Summary.—

Property Tax—Section 172(1) (a)

General Tax—Section 173(1) (a)

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|------------------------------|---|--|
| + | } | To be levied on the Annual value —Section 173(2). |
| Water Tax—Section 173(1) (b) | | |
| + | | |

(Drainage Tax—Section 173(1) (c)

Conservancy Tax—Section 173(1) (d))

Aggregate of all these taxes to range between 15% to 25% of the annual value—Section 173(3).

Annual value—*See* Section 174.

Determination of rates of taxes—*See* Section 148.

Exemption from General tax to Schools, etc.—*See* Section 177.

Imposition of Tax—Property of Union of India—See Article 285 of the Constitution of India—It runs as under :—

“285. *Exemption of property of the Union from State taxation.*—(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.”

Taxation—Imposition.—*See* head note “Taxation—Procedure must be strictly complied with” under Section 174 of this Book.

Toll.—It is a tax imposable by a Municipality as consideration for its maintenance of roads and bridges which are likely to be used by vehicles,

vide *Hindustan Vanaspati Manufacturing Co. v. Municipal Board, Gaziabad*¹; *Raghubir Singh v. Municipal Board, Hardwar*²; *Municipal Board, Hardwar v. Raghubir Singh*³; *Municipal Board, Hardwar v. Raghubir Singh*⁴. In any case in no conceivable construction of the term toll can be levied for the use of public places or roads for mere passing and repassing except for the purpose of trade or calling or for putting stalls and booths, vide *Sardar Jagdish Singh v. State of U. P.*⁵

Liability to toll.—It is leviable only when a laden vehicle is brought from outside the Municipal limits but where a truck driver had brought the load of coal from the railway goods-shed, i. e., from within the Municipal limits, it was held in *Kanhaya Lal v. State of U. P.*⁶ that he was not liable to toll tax and had, therefore, been wrongly convicted, because there is no provision in the Municipalities Act (and also in this Mahapalika Adhiniyam) which empowers it to charge toll from one which travels from one point to another within those limits. In other words so long as a person drives his vehicle from the goods-shed which is inside Municipal limits, to another point within these limits, no toll can be demanded from him.

In such cases, when vehicles are laden from the Railway goods-shed for the points in the interior city, the question arises who is the person who brings such goods (laden on the vehicles) from outside into the goods-shed (which is within Municipal limits)? The reply was given in the aforesaid case⁶ that obviously the Railway, by bringing their coal wagons from the main line (which is outside Municipal limits) into the goods-shed (which is within them) is plainly the person from whom the toll should be charged. A contrary view was earlier held by a Division Bench in *Hardwari Mal v. Municipal Board, Dehradun*⁷. The later view as expressed in *Kanhaya Lal v. State of U. P.*⁶ on appeal to the Supreme Court was as well confirmed in *Municipal Board, Manipur v. Kanhaya Lal*.⁸

Liability of payment of toll.—Point of time when it arises—A person driving a laden vehicle becomes liable to pay toll immediately he crosses the boundary of the Municipal limits but it is on reaching the barrier that the actual payment of the tax is made and this to a person appointed for the purpose, vide *Kanhaya Lal v. State of U. P.*⁶ In another case *Municipal Board, Hardwar v. Raghubir Singh*⁹ it was observed that a toll is a payment which is taken in respect of some benefit, common examples being a toll paid for the right to use a market or to cross a bridge. It is not, however, essential that the toll should be collected at the moment the benefit for which is paid arises and the earlier

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1. 1957 A. L. J. 126.
 2. A. I. R. 1956 Alld. 324 (326).
 3. A. I. R. 1958 Alld. 430 (432) (D. B.).
 4. A. I. R. 1966 S. C. 1502.
 5. Civil Misc. Writ No. 4037 of 1966, decided on 9th August, 1967 (Alld.).
 6. 1957 A. L. J. 812 (814) : 1957 A. W. R. 804.
 7. 1939 A. L. J. 1030 (1031) (D. B.) : 1939 Alld. 736.
 8. 1959 A. L. J. 882 (883) (S. C.).
 9. 1958 Alld. 430 (432) (D. B.).

view of the lower court in this very case *Raghubir Singh v. Municipal Board, Hardwar*¹ that a toll tax cannot be imposed on the vehicles going out of the limits of the Municipal Board was dissented.

It is not necessary that it be realised at the moment when the traveller starts to cross the bridge. There is no reason why it cannot be realised when the trader leaves the market or the passenger has reached the other end of the bridge. Also See the Head-note "Liability of payment of Octroi when ceases" under Section 219 in this book.

"Import".—This word literally means "carried into" or "brought into" when goods are received by a consignee and are brought by him into the Municipal limits (even at the Railway Station for taking delivery there and then to despatch it to another place beyond the Municipal limits) it was held in *Hardwar Mal v. Municipal Board, Dehradun*² that such person imports them within the Municipal limits and was liable to be taxed. Also see the Supreme Court view in *Empress Mills v. Municipal Committee, Wardha*³ where it was held that it is not merely the bringing into but comprises something more, i. e., incorporating and mixing up of the goods imported with the mass of the property in the local area. The concept of the import thus implies something brought for the purpose of sale or being kept.

"Export".—Similarly the word 'export' has reference to taking out of goods which had become part and parcel of the mass of the property of the local area and will not apply to "goods in transit", i. e., brought into the area for the purpose of being transported out of it vide *Empress Mills v. Municipal Committee, Wardha*.³

Toll—Cannot be collected twice.—If the consideration for the payment of the toll is the use of the market area, or the right to cross the bridge, the toll cannot be levied both when the trader enters and when he leaves the market or when the passenger starts crossing the bridge and again when he has crossed it. It cannot be, however, collected twice in respect of the same benefit, vide *Municipal Board, Hardwar v. Raghubir Singh*.⁴

Tax on motor vehicles—By whom payable.—In the case of *Municipal Board, Hardwar v. Raghubir Singh*⁴ it was held that such tax is payable by the person who brings that vehicle in or takes it out of those limits. However, it is submitted that in that case their lordships had taken this view relying on the notifications issued by that Board and as such it cannot be a rule of law in general. In an earlier case *Emperor v. Har Datt*⁵ it was held that it appeared from the bye-laws that it was leviable not on passengers but on a laden vehicle. However, for a further discussion. See also *Ghaudhary Attar Singh v. State of U. P.*⁶

1. A. I. R. 1956 Alld. 324 (326).

2. 1939 A. L. J. 1030 (1031) (D. B.) : 1939 Alld. 736.

3. A. I. R. 1958 S. C. 341 (347).

4. 1958 Alld. 430 (432) (D. B.).

5. 1936 A. L. J. 962 (963) (D. B.).

6. 1970 A. L. J. 249.

Toll tax—Validity—Whether valid under Schedule VII List II, Entry 59 of Constitution of India—Yes—See Municipal Board, Hardwar v. Raghbir Singh.

Toll tax on passengers (carried in a vehicle) or a vehicle tax to be realised from passengers in any form—Sub-clause (2) (d) or (2) (j)—Illegal and void—Words “Toll Tax” and “Any other tax”—Scope.—Any levy of a toll tax on passengers would be beyond the competence of the Mahapalikas or Municipal Boards. It could be urged that the analogous clause (xiv) of Section 128(1) of the Municipalities Act authorises “the Municipal Board to levy any other tax which the State Legislature has power to impose in the State under the Constitution.” But that aspect of the case is concluded by the decision of their Lordships of the Supreme Court in the case of *Municipal Board of Hardwar v. Raghbir Singh*.¹ In that case the question raised was whether a toll-tax which was not covered by the provisions of clause (vii) aforesaid could still be a valid levy of tax under clause (xiv) aforesaid or not. Their Lordships held that that was not possible, vide *Brij Mohan Chandra v. Municipal Board, Nainital*² which was later confirmed by the Supreme Court in appeal in *Municipal Board, Nainital v. Brij Mohan Chandra*.³

Fixing of different rates of toll for vehicles laden with different kinds of goods—Whether valid—Yes.—It is open to a Municipal Board to fix different rates of toll for vehicles, etc., containing or laden with different kinds of goods. There is nothing in the Act to prevent the Board from differentiating between one kind of goods and another kind of goods, fixing different rates of toll for different kinds of goods and exempting certain goods from payment of any toll, vide *Mahadeo Prasad v. Tanda Municipal Board*.⁴

Octroi.—Octroi it self means a tax : a tax on commodities, vide *Municipal Board, Jhansi v. D. P. Agarwal*.⁵

“Brought for use”—Scope—Sub-section (2) (b).—Where cattle were taken in a place within a Municipal area for the purpose of making dry meat for export to Burma and other places outside that Municipal limits it was contended that as cattle were not brought within the Municipality for the purpose of use or consumption, no octroi duty was payable. The contention was repelled and it was held that the slaughter of cattle for the purpose of producing meat would be ‘using’ them. The position is similar to that of importing raw material and converting it into finished articles, vide *Ajmeri v. Emperor*.⁶

“Brought within City” (Municipality)—These words imply that goods or animals are imported from some place entirely outside the Municipal limits and brought inside such limits. They are not meant to cover a case of transit where goods are transferred from one part of the Municipality to another part within its limits. The latter act is not importation but is only transmission, vide *Ajmeri v. Emperor*.⁶

“Bring”.—This word has an element of pause or repose. It means the vehicle upon which tax is levied at all, stays within the limits of the Municipality.

1. 1913 Alld. 430 (432) (D. B.).

2. 1963 A. W. R. 438 (440).

3. A. I. R. 1971 S. C. 439 (440).

4. 1959 A. L. J. 270 (271).

5. 1956 A. L. J. 139 (141) (D. B.).

6. 1934 A. L. J. 80 (32) (D. B.) : A. I. R. 1934 Alld. 39.

pality, vide *Nek Mohammad v. Emperor*¹ but this view has been over ruled in *Emperor v. Har Datt*² and it was held that as soon as a vehicle enters the Municipal limits the act of bringing it is complete and becomes liable for the tax irrespective of the fact whether it stays or not.

Area—Imposition of Taxes—Whether whole of the Mahapalika area or in a part thereof.—In the analogous Section 128 of the Municipalities Act, the words were “a board may impose in the whole or any part of a Municipal area” and the question arose whether imposition of any tax in any part of a Municipal area was a valid discretion with the Board and it was held that the discretion was not entirely unfettered and this section was not void in so far as it authorises a Board to impose certain taxes mentioned in it on any part of Municipality but such a taxation may be held void in view of Article 14 of the Constitution if it is discriminatory and the classification on which it is based is not reasonable which is a matter of evidence in every case, vide *Municipal Board, Bareilly v. Kundan Lal*.³

It appears that the Legislature while enacting the present Act considered such imposition of tax in any part of the Mahapalika to be reasonable and as such the said provision have not been made in the present Act and consequently no tax can now be imposed only in a part of the Mahapalika.

Tax on trades, callings and professions—D. A. ; Provident Fund and Insurance Premium—Cannot be excluded.—Where a Government notification authorised the Municipality to levy tax under this sub-section on the “income” and not “Salary” earned or arising within the Municipality, it was held that Dearness Allowance paid to the Assessee along with his salary cannot be excluded from the amount of his income for the purpose of assessing tax under this head although dearness allowance is not salary. There is no provision either in the Municipalities Act or the Rules which justifies exclusion of the amounts paid either by way of provident fund or as premium to the Life Insurance Company, vide *Shambhu Nath Tandon v. Municipal Board, Sitapur*.⁴

“Entering”.—This word in Section 128 (viii) of the Municipality Act clearly indicates that the conveyance to be liable to the toll must enter the Municipality from places outside it. By no stretch of language it is possible to hold that a vehicle which is already in the limits of the Municipality, when it plies for hire, enters the Municipal limits, vide *Municipal Board, Mainpuri v. Kanhaiya Lal*.⁵ See the Head-note “Liability to toll” under this section in this Act.

Octroi duty and Excise duty—Distinction.—Excise duty is a tax on manufactured goods. Octroi duty is a tax levied on the entry of goods within a particular area, vide *Ram Krishna Ram Nath v. Kamptee Municipal Committee*.⁶

Liability of payment of octroi—When ceases.—See this Head-note under Section 219 in this book.

1. A. I. R. 1936 Alld. 83.

2. 1936 A. L. J. 962 (964) (D. B.) : 1936 A. W. R. 840 : A. I. R. 1936 Alld. 743.

3. 1959 A. L. J. 385 (388) (F. B.).

4. 1959 A. L. J. 639 (640, 641) (D. B.) : 1959 Alld. 626.

5. 1959 A. L. J. 882 (883) (S. C.).

6. A. I. R. 1950 S. C. 11.

Road not vesting in the Mahapalika—Mahapalika only a care-taker—No fee can be charged.—The members of public have a right of passage over a high way which includes all forms of traffic, vide *Saghir Ahmad v. State of U. P.*¹ and is not a right created even by the motor vehicle Act and is not a right which inheres in the public because the Municipal Board allows it. Consequently, a Municipal Board cannot charge any fee for such user, vide *G. A. Singh v. State of U. P.*²

“Plying for hire or kept within the City”—Sub-clause (1) (b).—This expression does not mean that the words “for hire” must be read with the word “kept” as well as with the word “plying”. Its meaning clearly is that all carts either kept in the Municipality or kept outside but plying for hire in the Municipality, are liable to be licenced, vide *Mewa Ram v. Emperor*.³

Railway—Scope.—A tramway company which subsequently started running railway and the whole Indian Railway Act except its Section 135 was extended to that company, it was held nevertheless a ‘Railway’ within the meaning of Article 366 (20) of the Indian Constitution, vide *S. S. L. Rly. Co. v. Saharanpur Municipality*.⁴

Theatre Tax—Imposition is valid and not hit by Article 276 Constitution of India—See detailed discussion in *Niranjan Lal Bhargava v. State of U. P.*⁵

Property Taxes

173. Property taxes leviable.—(1) For the purposes of sub-section (1) of Section 172 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City—

- (a) a general tax which may be levied, if the Corporation so determines, on a graduated scale ;
- (b) a water tax ;
- (c) drainage tax leviable in areas provided with sewer system by the Mahapalika ;
- (d) a conservancy tax in areas in which the Mahapalika undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cess-pools.

(2) Save as otherwise expressly provided in this Act or rules made thereunder, these taxes shall be levied on the annual value of buildings or land as the case may be :

Provided that the aggregate of the property taxes shall in no case be less than 15 per cent nor more than 25 per cent of the annual value of the building or land or both assessed to such taxes.

174. Definition of “annual value”.—“Annual value” means—

- (a) in the case of railway stations, colleges, schools, hostels, factories and other such buildings, a proportion not below 5 per cent. to

1. A. I. R. 1954 S. C. 728.

2. 1970 A. L. J. 249 (253).

3. A. I. R. 1943 All. 13.

4. A. I. R. 1967 S. C. 1747 (1751, 1753).

5. 1969 A. L. J. 295.

be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building, less depreciation at a rate to be fixed by rule, to the estimated value of the land appurtenant thereto, and

- (b) in the case of a building or land not falling within the provisions of clause (a) the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let, or where the building or land is not let or in the opinion of the assessing authority is let for a sum less than its fair letting value, might reasonably be expected to be let from year to year :

Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the Mahapalika, be excessive if calculated in the aforesaid manner, the Mahapalika may fix the annual value at any less amount which appears to it equitable :

Provided further that where the Mahapalika so resolves, the annual value in the case of owner occupied building and land shall for the purposes of assessment of property taxes be deemed to be 25 per cent. less than the annual value otherwise determined under this section.

Comments

Analogous Law.—Section 140 of the U. P. Municipalities Act.

Summary—

Annual value.—Sec. 174.

5% of the estimated present cost of erection of building (in case of factories, etc.), or

Gross annual rent on which the building is actually let or might reasonably be expected to be let from year to year (other buildings).

Owner occupied building : taxes to be levied on 25% less than the annual value.

Buildings (including school) exempted—Sec. 177.

Determination of rates of taxes.—Sec. 148.

Before February 15 (if it is indebted Mahapalika¹) or March 15 (if otherwise), the Mahapalika shall, after considering the proposal of the Executive Committee, determine the rates of taxes but subject to limitations prescribed in Chapter IX, i. e., Section 172 to 227.

The rates of taxes as based on the assessment list prepared under the Municipalities Act can be again determined under this Adhiniyam even without preparing a new list only by adopting the same by virtue of section 577 (d) of the Adhiniyam, vide *M. P. Sugar Mills v. Kanpur Municipality*².

Supplementary taxation.—Increasing of taxes for unexpired term—Section 225.

Liability of taxes on the Lessor—Section 179.

Liability of Drainage and Conservancy Tax on the occupier—Section 181.

Provision for reimbursement of taxes paid—Section 179.

Manner of recovery of taxes—Section 503.

1. Kanpur Mahapalika is an indebted Mahapalika.

2. A. I. R. 1969 All. 393 (397).

Annual value—Procedure for Determination.—The annual value is determined because under the U. P. Municipalities Act it is taken into consideration in the assessment of a tax on the annual value of building, in the assessment of water tax, and in the determination of a scavenging tax or a tax for the cleansing of latrines and privies. In order to determine the tax on the "annual value" of buildings, the Municipal Board causes an assessment list of the buildings to be prepared. This list contains several particulars including the annual letting value or other particulars determining the annual value and the amount of tax assessed thereon. The assessment list is published and objections are invited to the valuation and assessment. After the objections are disposed of and the resulting amendments, if any, have been made in the assessment list, the list is authenticated by the signature of the appropriate authority and is then deposited in the Municipal Office and thereupon declared to be open for inspection. Such an assessment list is ordinarily prepared once in every five years, and the valuation and assessment entered therein are valid from the date on which the list takes effect in the Municipality until the first day of April next following the completion of the new list. The assessment list is open to amendment and alteration at any time in respect of a number of matters, among them being the revaluing or reassessing of the property the value of which has been increased by additions or alterations, vide *Municipal Board v. D. M. Muzaffarnagar*.¹ The same is the procedure under this Adhiniyam.

Annual value—Owner occupied building.—The rent of the buildings of pre. 1951 construction is controlled by Rent Control Act. Annual rent is, therefore, the actual rent paid by the tenant. So in the case of owner occupied buildings the annual value cannot exceed the rent provided by the statute. Assessing authority cannot ignore the statute which controls rents of the buildings, vide *K. B. Agrawal v. Kripa Narayan*² and *Niranjan Lal Bhargava Trust v. Nagar Mahapalika, Allahabad*³, *Ram Krishna v. Nagar Mahapalika, Kanpur*⁴.

Clause (a)—Scope.—Clause (a) enumerates "railway stations, hotels, colleges, schools, hospitals, factories and other such buildings". The phrase "other such buildings" will include such buildings as by the rule of *ejusdem generis* are related in kind to railway stations, hotels, colleges, etc., which precede that phrase. One quality common to all of them is that they refer to a use which caters to a public need. In all these cases, one conceives of a building applied to a purpose impregnated with the element of public utility. Whether it is a railway station, hotel, college, school, hospital or factory, it is the element of public utility; public welfare, public use, or, in other words, that which is related to a public need or the commonweal, which runs through Cl. (a) in common emphasis. The phrase "other such buildings" must therefore, refer to buildings whose user at the relevant time bears a character partaking of the same emphasis, vide *Municipal Board v. D. M. Muzaffarnagar*.¹

Clause (a) and clause (b)—Distinction.—This distinction which divides Cl. (a) from Cl. (b) is reflected in the basis for computing the annual value. In Cl. (a), the annual value is determined by reference to the present cost of

1. A. I. R. 1966 All. 37 (38).

2. 1959 A. W. R. 672.

3. 1970 A. L. J. 332 : 1970 A. W. R. 113 (116).

4. 1970 A. W. R. 241.

constructing the building added to the estimated value of the appurtenant land. The quantum of the "annual value" being dependent on the use to which the building is put, this, and not letting value, is the basis adopted by the statute because it is difficult to conceive of a building when used as a railway station, hotel, college, school, hospital or factory being ordinarily open to letting out. All other buildings are covered by Cl. (b) where the letting value provides the referential basis for calculating the "annual value", vide *Municipal Board v. D. M., Muzaffar Nagar*.¹

Annual value—Imposition.—It must be remembered that the tax imposed is a tax on the "annual value" of a building. It is not a tax on the "annual value" of a railway station or a hotel or a college, etc. The building may be used as a railway station hotel, college, etc., and the character of the user determines the basis on which the annual value of the building will be determined. If it is a building which is not being used as a railway station, hotel, college, etc., falling within the provisions of Cl. (a) its "annual value" must be determined by reference to Cl. (b). It is one thing to say that there is a building, it is quite another to say that the building is used as railway station, hotel, college, etc. A distinction exists between the two ideas. The former connotes the nature of the object, which is fixed in mental concept and is not normally variable, the latter treats of the nature of its user which may vary according to circumstances. There can be little dispute that a building which is today used as a hotel or a college may at another time be used for the purposes of private residence. Accordingly while the incidence of the tax is made dependent on the existence of a building, what should be the amount of that tax is determined by the use to which the building is applied at the time of the levy, *Municipal Board v. D. M. Muzaffar Nagar*.¹

Procedure for imposition of property taxes.—Regarding levy of property taxes, procedure is prescribed in Section 207 to 209. Its alteration once in every 5 years is provided in Section 211 while alteration and amendment on the application of persons interested therein is provided in Section 213.

Regarding levy of 'taxes other than property taxes', the procedure is prescribed in Sections 199 to 203. Procedure for abolition and alteration of a tax is given in Section 204 whereas the procedure for remedy or abolition of a tax by the State Government is given in Section 205. Section 206 prescribes method for imposing such taxes by the State Government.

Without again observing the same formalities as required under this Adhiniyam, the tax imposed under the Municipalities Act, after observing those formalities, can be treated as tax imposed under this Adhiniyam, vide *M. P. Sugar Mills v. Kanpur Municipality*.²

Also see the headnote below "Taxation—Procedure must be strictly complied with".

Taxation—Procedure must be strictly complied with.—A taxation to be valid must be levied, assessed and realised in strict conformity with the statute which authorises it, vide *Raghovendra Kripal v. M. B. Hapur* and *Municipal Board, Hapur v. Raghovendra Kripal*.⁴ *Nagar Mahapalika Varanasi v. D. D. Banittacharya*.³

1. A. I. R. 1966 Alld. 37 (38).
2. A. I. R. 1969 Alld. 393 (397) (D. B.).
3. 1958 A. L. J. 857.
4. 1960 A. L. J. 185 (D. B.).
5. 1968 A. L. J. 926 (931) (S. C.). (The famous case of Rickshaw licences.)

*O. P. Sharma v. State of U. P.*¹. However, the procedure under this Adhiniyam in respect of levy of taxes enumerated under sub-section (1) of Section 172 (which includes property taxes) does not prescribe publication in a local newspaper and of its notification in official *gazette* a condition precedent as distinguished from the levy of taxes other than the above taxes enumerated in Sub-section (2) thereof wherefor publication and notification are essential. But in the Municipalities Act no such distinction is made and publication and notification are both essential in respect of property taxes and other taxes as well. It is so because Section 172 enumerates taxes in two categories, one under Sub-section (1) and the other under sub-section (2), and also it is clear because Section 199 lays down that the procedure prescribed thereunder relates to the taxes enumerated under sub-section (2) of the Section 172 only whereas Section 131 of the Municipalities Act, analogous to Section 199 of the Adhiniyam, says about "a tax" only and not about any particular tax mentioned in Section 128 thereof. Also see *Municipal Board, Benares v. Jokhun*.²

Whether identical property taxes under the Municipalities Act are inconsistent with the provisions of Adhiniyam—No—It is urged that under the U. P. Municipalities Act House tax and Water tax are optional taxes while under the Adhiniyam the levy is compulsory. It is also pointed out that there is no minimum fixed rate under the Act while Section 173 (2) of the Adhiniyam fixes a minimum of 15 per cent as the aggregate of the property taxes. But it is difficult to see how the nature of the taxes is in any way different merely because the authority imposing the tax is given an option under one statute whether it will or will not impose the tax, and under the other statute is compulsorily bound to impose the tax. Nor the prescribing of a minimum rate for the levy of a tax can make any difference to the nature of the tax. The nature of the tax is to be determined by other considerations, the most important of which is the subject-matter of the tax. As to their nature, therefore, it is clear that the property taxes levied under Section 173 (1) of the Adhiniyam are essentially of the same character as the taxes contemplated under the corresponding provisions of Section 128 (1) of the Act. The general tax mentioned in Section 173 (1) (a) of the Adhiniyam is a tax on buildings and lands and by virtue of Section 173 (2) it is levied on the annual value of such buildings or lands. It corresponds to the tax on the annual value of buildings or lands mentioned in Section 128 (1) (i) of the U. P. Municipalities Act. Section 173 (1) (b) of the Adhiniyam speaks of water tax. Water tax, like the general tax, is a tax on buildings and lands and by virtue of Section 173 (2) the levy is on the annual value of buildings or lands. So also the water tax under Section 128 (1) (x) of the U. P. Municipalities Act is levied on the annual value of buildings or lands. When the aforesaid taxes imposed under the U. P. Municipalities Act are identical in nature with the corresponding property taxes set out in Section 173 (1) of the Adhiniyam, it is not possible to accept the contention that the said taxes under the Act are inconsistent with the provisions of the Adhiniyam, vide *M. P. Sugar Mills v. Kanpur Municipality*.³

Difference between Property taxes and House and Water taxes—No—The assessment list prepared under the U. P. Municipalities Act does not betray any material inconsistency with the provision of this Adhiniyam. There is no difference in the essential character of the taxes levied under the Adhiniyam and in consideration here from the character of the corresponding

1. 1959 A. L. J. 501.

2. A. I. R. 1939 All. 394 (D. B.).

3. A. I. R. 1969 All. 393 (396) D. B.).

taxes levied under the U. P. Municipalities Act.. The allegation that the taxes under the U. P. Municipalities Act have been imposed by reference to clause (1) of Section 128 (1) namely "a tax on the annual value of buildings or lands or of both" and clause (X) of Section 128 (1), namely "a water tax on the annual value of buildings or lands or of both" whereas the property taxes under Section 173 (1) are levied on buildings and lands. But there is no material difference between the two. A tax on the annual value of buildings or lands or of both is not different from a tax on buildings and lands. The mere use of the disjunctive "or" in clauses (i) and (x) of Section 128 (1) of the Act and the use of the conjunctive "and" in Section 173 (1) of the Adhiniyam does not alter the identical bases upon which these taxes are levied. Under Section 140 of the U. P. Municipalities Act the definition of "annual value" means that in the case of certain specified buildings it is a proportion not exceeding 5% of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto, whereas under Section 174 of the Adhiniyam the annual value in the case of those buildings is determined at a proportion not below 5% of the aggregate. It is also pointed out that the second proviso to Section 174 provides that in the case of owner-occupied buildings and lands the annual value for the purposes of assessment of property taxes shall be deemed to be 25% less than the annual value otherwise determined. Such a provision is absent from Section 140 of the U. P. Municipalities Act. It is urged upon this that the property taxes contemplated by the Adhiniyam are different from those envisaged by the Act. The said contention was repelled because the considerations mentioned here do not affect the nature of the tax concerned but merely governs its quantification. It has long been recognised that the quality of a tax must not be confused with its quantification, *vide M. P. Sugar Mills v. Kanpur Municipality*¹ See the next headnote under this Section.

Assessment—Meaning and Scope.—It should be in accordance with law. See this Headnote in Section 225 in this Book.

Estoppel against Mahapalika—Whether Assessment made creates—No—Where a premises is constructed without authority but it is assessed by the Mahapalika, this action creates estoppel against the Mahapalika regarding subsequent demolition of that unauthorised but assessed premises, *v'de Churni Lal v. Corporation of Calcutta*.² But a contrary view has been expressed in *Lala Ram v. Nagar Mahapalika, Allahabad*³ See Head note "Estoppel and Acquiescence against demolition" under Section 229 in this Book.

Estoppel—None against new taxation measure—There is no such thing as estoppel applying to a matter like this because no one can take away the constitutional right of challenging the validity of a new taxation measure, *vide Raghendra Kripal v. M. B. Hapur*.⁴

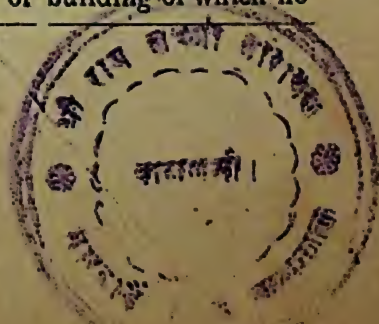
175. Restriction on the imposition of water-tax.—The imposition of a tax under clause (b) of sub-section (1) of Section 173 shall be subject to the restriction that the tax shall not be imposed on land exclusively used for agricultural purposes, or where the unit of assessment is a plot of land or a building, as hereinafter defined, on any such plot or building of which no

1. A. I. R. 1969 All. 393 (396) (D. B.).

2. 11 C. W. N. 30 (32, 34) (D. B.).

3. 1970 A. W. R. 42

4. 1958 A. L. J. 856 (858).



part is within a radius, to be fixed by rule, in this behalf for each City; from the nearest stand-pipe or other waterworks whereat water is made available to the public by the Mahapalika.

Explanation—In this section—

- (a) "building" shall include the compound (if any, thereof, and, where there are several buildings in common compound, all such buildings and the common compound ;
- (b) "a plot of land" means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other co-occupiers or by public property.

Comments

Analogous Law.—Section 129 of the U. P. Municipalities Act.

Building—Meaning.—This word is also defined in Section 2 (6) of this Adhiniyam but that definition should not be referred to in this section because the definition in the present section is a particular one whereas the definition in Section 2 (6) is a general in nature and according to the principles of interpretation of statutes a particular definition should be given preference over the general definition. It was as well held with reference to the analogous provision contained in Section 129 of the Municipalities Act in the case of *K. S. W. Ltd. v. District Magistrate, Bareilly*¹.

176. Pooling of income from waterworks, drainage works, etc.—The proceeds of the water, drainage and conservancy taxes and all other incomes derived from waterworks, drainage works, drains and excrementitious and polluted matter collected from privies, urinals and cess-pools and from disposal of such matters and income from sullage farms shall be pooled together and shall be defrayed on purposes connected with the construction, maintenance, extension or improvement of such waterworks and drainage works and with the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cess-pools including maintenance of sullage farms.

177. General tax on what premises to be levied.—The general tax shall be levied in respect of all buildings and lands in the City except—

- (a) buildings and lands solely used for purposes connected with the disposal of the dead ;
- (b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose ;
- (c) buildings solely used as jails, court houses, treasuries, schools and colleges ;
- (d) ancient monuments as defined in the Ancient Monuments Preservation Act, 1904, subject to any direction of the State Government in respect of any such monument ;
- (e) any building or land the annual value of which is less than sixty rupees or such higher amount up to rupees one hundred and eighty as the Mahapalika may fix provided the owner thereof does not own any other building or land in the City ; and

- (f) buildings and lands vesting in the Union of India except where provisions of clause (2) of Article 235 of the Constitution of India apply.

178. Remission by reason of non-occupation.—(1) When a building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year, the Mukhya Nagar Adhikari shall remit or refund so much of each of the property taxes of that year as may be proportionate to the number of days that the said building or land has remained vacant and unproductive of rent.

(2) When a building consists of two or more separate tenements and one or more such tenements has remained vacant and unproductive of rent during any such period as aforesaid, the Mukhya Nagar Adhikari may remit or refund such portion (if any) of each tax or instalment as may be prescribed :

Provided that no remission shall be granted unless notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the Mahapalika ; and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

(3) The burden of proving the facts entitling a person to remission or refund under this section shall be upon the person claiming the same.

(4) For the purposes of this section a building or land shall not be deemed to be vacant, if it is maintained as a pleasure resort or town or country house, or be deemed to be unproductive of rent, if it is let to a tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not.

Comments

Analogous Law.—Section 151 of the U. P. Municipalities Act.

"Vacant and unproductive of rent"—*Scope.*—Case of a building with garden. If the owner takes any produce of the garden, howsoever, small, he occupies the whole building with the compound is not the correct view to take. His lordship in *Upendra Nath Basu v. Municipal Board, Benaras*,¹ held that where a compound is a mere appurtenant to a building and while waiting for the building to be rented the owner maintains the compound in order that the house may not deteriorate, then if he takes the produce while waiting for some tenant to take the house, it would be difficult to say that he is occupying the premises or that the premises are productive of rent. On the other hand if he deliberately neglects the house but prefers to make profit out of the maintenance of the garden in the large compound then it is not vacant. Where the houses belonging to the Government of U. P. were allotted in their officers name who had gone to the hills leaving their furniture in the house wherein was also stored office furniture although during this period those officers did not pay any rent and a Choukidar was also kept there by the Government, it was held that it was not a case where the building could be deemed to have remained unproductive of rent because there was not a complete cessation of the use of the house and the officers (tenants) had a continuing right of occupation therein, vide *Lucknow Municipality v U. P. Government*.²

1. 1934 A. L. J. 1067.

2. A. I. R. 1943 Oudh 58 (60) (D. B.)

Notice under this section—Requisites.—Where in a notice issued under this section does not mention that the building was unproductive of rent, it cannot be said that the notice was defective by reason of omission if it was clearly stated therein that a rebate or remission was claimed, in respect of a particular building, from the taxes, vide *Lucknow Municipality v. U. P. Government*.¹

Burden of proof.—A person whose claim would be defeated if his claim is not proved is in law bound to prove it and thus burden of proof lies upon him. There is no doubt that the burden of proving that the building remained vacant and unproductive of rent lies on the claimant for such remission, vide *Lucknow Municipality v. U. P. Government*.¹

179. Primary responsibility for certain property taxes on annual value.—(1) Except where otherwise prescribed, every tax (other than a drainage tax or a conservancy tax) on the annual value of buildings or lands shall be leviable primarily from the actual occupier of the property upon which the tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Central or the State Government or from the Mahapalika, or on a building lease from any person.

(2) In any other case the tax shall be primarily leviable as follows, namely :

- (a) if the property is let from the lessor ;
- (b) if the property is sub-let from the superior lessor ;
- (c) if the property is unlet from the person in whom the right to let the same vests.

(3) On failure to recover any sum due on account of such tax from the person primarily liable, the Mukhya Nagar Adhikari may recover from the occupier of any part of the buildings or lands in respect of which it is due that portion thereof which bears to the whole amount due the same ratio as the rent annually payable by such occupier bears to the aggregate amount of rent payable in respect of the whole of the said building or lands, or to the aggregate amount of the letting value thereof in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under the foregoing provisions shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable.

Comments

Analogous Law.—Section 149 of the U. P. Municipalities Act.

Scope.—Owner of land is not liable to be assessed to property tax but it is the owner of the building who should be assessed therefor, vide *Cawnpore Municipal Board v. Trijugi Narayan*.²

But where a building is owned by A, leased to B and sublet to C, it is not B who can be termed as a "Superior Lessor" and cannot be made liable for taxes but the owner A is the Superior Lessor liable for taxes, vide *Municipal Board, Mathura v. Radhaballabh Pathak*.³

'Superior Lessor'—Meaning—See Radhaballabh's case.³

1. A. I. R. 1943 Oudh 58 (60) (D. B.).

2. A. I. R. 1947 All. 82 (83) : 1946 A. W. R. 522.

3. I. L. R. 1949 All. 651.

180. Liability for payment of other such taxes.—(1) A drainage tax, or a conservancy tax on the annual value of buildings or lands shall be levied from the actual occupier of the property upon which the taxes are assessed :

Provided that, where such property is let to more occupiers than one, the Mukhya Nagar Adhikari may at his option levy the tax from the lessor instead of from the actual occupiers.

(2) A lessor from whom a tax is levied under the proviso to sub-section (1) may, in the absence of a contract to the contrary, recover the tax from any or all of the actual occupiers.

Comments

Analogous Law.—Section 150 of the Municipalities Act.

181. Property taxes to be a first charge on premises on which they are assessed.—(1) Property taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon, be a first charge, in the case of any building or land held immediately from the State, upon the interest in such building or land of the person liable for such taxes and upon the movable property, if any, found within or upon such building or land and belonging to such person; and, in the case of any other building or land, upon the said building or land and belonging to the person liable for such taxes.

Explanation.—The term “property-taxes” in this section shall be deemed to include any charges payable for water supplied to any premises and the costs of recovery of property taxes as specified in the rules.

(2) In any decree in a suit for the enforcement of the charge created by sub-section (1), the Court may order the payment to the Mahapalika of interest on the sum found to be due at such rate as the Court deems reasonable from the date of the institution of the suit until realization, and such interest and the cost of enforcing the said charge, including the costs of the suit and the cost of bringing the premises or movable property in question to sale under the decree, shall, subject as aforesaid, be a first charge on such premises and movable property along with the amount found to be due, and the Court may direct payment thereof to be made to the Mahapalika out of the sale proceeds.

Comments

Analogous Law.—Section 177 of the said Act.

Taxes on Vehicles, Boats and Animals

182. Taxes on vehicles, boats and animals.—(1) A tax under clause (b) or clause (c) of sub-section (1) of Section 172 shall be levied at rates not exceeding those prescribed by rule by the State Government in this behalf from time to time on vehicles and boats or on animals, as the case may be.

(2) The Mahapalika shall from year to year, in accordance with Section 148 determine the rates at which the tax referred to in sub-section (1) shall be levied.

(3) A vehicle, boat or animal kept outside the limits of the City but regularly used within such limits shall be deemed to be kept for use in the City.

183. Exemptions from certain taxes mentioned in Section 172.—(1) The tax under clause (b) of sub-section (1) of Section 172 shall not be leviable in respect of—

(a) vehicles and boats belonging to the Mahapalika ;

- (b) vehicles and boats vesting in the Union of India except where the provisions of clause (2) of Article 285 of the Constitution of India apply ;
- (c) vehicles and boats vesting in any State comprised in the Union of India and used solely for public purposes and not used or intended to be used for purposes of profit ;
- (d) vehicles and boats intended exclusively for conveyance free of charge of the injured, sick or dead ;
- (e) children's perambulators and tricycles ;
- (f) vehicles or boats kept by *bona fide* dealers in vehicles or boats for sale merely, and not used.

(2) The tax under clause (c) of sub-section (1) of Section 172 shall not be leviable in respect of—

- (a) animals belonging to the Mahapalika ;
- (b) animals vesting in the Union of India except where the provisions of clause (2) of Article 285 of the Constitution of India apply ;
- (c) animals vesting in any State comprised in the Union of India and used solely for public purposes and not used or intended to be used for purposes of profit.

(3) If any question arises under Clause (b) or Clause (c) of sub-section (1) or Clause (b) or Clause (c) of sub-section (2) whether any vehicle, boat or animal vesting in the Union of India or any State comprised therein is or is not used or intended to be used for purposes of profit, such question shall be determined by the State Government whose decision shall be final.

Other Taxes

184. Betterment tax.—"Betterment tax" means a tax to be charged on the increase in the value of the land comprised in a scheme put into operation under Chapter XIV, but not actually required for the execution thereof, or on the increase in the value of any land adjacent to and within one quarter of a mile of the boundaries of such scheme, provided that such adjacent land is situated within the City.

185. Amount of Betterment tax.—The Betterment tax shall be an amount equal to one-half of the difference between the market value of the land on the date specified in the public notice under sub-section (2) of Section 187 and the market value of such land on or immediately before the date on which the scheme was finally notified under Chapter XIV :

Provided that for the purposes of calculation under this section the land shall be treated as free of all buildings.

186. Payment of Betterment tax.—Where a Mahapalika has imposed a tax mentioned in clause (f) of sub-section (2) of Section 172 every owner of land mentioned in Section 184 or any person, having an interest therein in respect of the increase in the value of such land, shall in the manner herein-after provided pay to the Mahapalika such Betterment tax as may be determined by Mukhya Nagar Adhikari.

187. Notice of levy of Betterment tax.—(1) The State Government shall, by notification in the official *Gazette*, declare the date on which a scheme shall be deemed to have been completed.

(2) Within one year of the date of the completion of the scheme declared in sub-section (1), the Mukhya Nagar Adhikari shall give public notice of the intention of the Mahapalika to levy a Betterment tax from a specified date.

188. Assessment of Betterment tax.—(1) The Mukhya Nagar Adhikari shall at any time after one month from the publication of such notice assess the amount of Betterment tax payable by the person concerned and shall give a notice in writing to such person stating the amount of the tax and the instalments, if any, and the dates on which the tax shall be paid together with such other particulars as may be necessary.

(2) Any person on whom a notice of assessment is served in sub-section (1) may, within one month from the date of the service of such notice, file an objection against such assessment before the Mukhya Nagar Adhikari :

Provided that an objection may be entertained even after the expiry of the period mentioned in sub-section (1) if the Executive Committee or sub-committee thereof referred to in sub-section (3) is satisfied that the failure to file objection was due to causes beyond the control of the objector.

(3) After an opportunity has been given to the objector of being heard, the Executive Committee or a sub-committee thereof appointed in this behalf shall decide the objection and may then confirm, modify or cancel the assessment.

(4) If the person on whom a notice of assessment is served under sub-section (1) fails to file an objection, under sub-section (2), the order of assessment shall be conclusive and shall not be questioned before any court of law or tribunal.

189. Alternative to payment of Betterment tax.—(1) A person liable to pay Betterment tax may at his option instead of paying thereof to the Mahapalika, execute an agreement with the Mahapalika to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of 6 per cent. per annum.

(2) A person who has exercised his option under sub-section (1) may, at any time, subject to his giving six months' notice of his intention, pay the amount of Betterment tax assessed under Section 183.

190. Recovery of arrears of Betterment tax.—Arrears of Betterment tax shall be realized in the manner provided in Chapter XXI.

191. Tax on deeds of transfer of immovable property—(1) Where the Mahapalika has imposed a tax referred to in clause (g) of Section 172, the duty imposed by the Indian Stamp Act, 1899, on any deed of transfer of immovable property shall, in the case of immovable property situated within the City, be increased by 2 per cent. [on the amount or value of the consideration with reference to which the duty is calculated under the said Act.]¹

(2) All collections resulting from the said increase shall, after the deduction of incidental expenses, if any, be paid to the Mahapalika by the State Government in such manner as may be prescribed by rules.

(3) For the purpose of this section, Section 27 of the Indian Stamp Act, 1899, shall be so read and construed as if it specifically required the particulars referred to therein to be separately set forth in respect of—

1. Subs. by U. P. Act No. XXIX of 1966.

(a) property situated within the City, and

(b) property situated outside the City.

(4) For the purposes of this section, Section 64 of the Indian Stamp Act, 1899, shall be so read and construed as if it referred to the Mahapalika as well as to the Government.

Transfer of immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. This section lays down that Stamp duty on such instruments shall be increased by 2 per cent. on the value of the property transferred and all collections resulting from the said increase shall, after the deduction of incidental expenses, be paid to the Mahapalika by the State Government.

192. Tax on advertisements.—Where a Mahapalika imposes a tax mentioned in clause (h) of sub-section (2) of Section 172, every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any manner whatsoever, in any place whether public or private, shall pay on every advertisement which is so erected, exhibited, fixed, retained or displayed to public view, a tax calculated at such rates and in such manner and subject to such exemptions as may be provided by the Act or rules made thereunder :

Provided that no tax shall be levied under this section on any advertisement or a notice—

(a) of public meetings, or

(b) of an election to any legislative body or the Mahapalika,

(c) of a candidate in respect of such an election :

Provided also that no such tax shall be levied on any advertisement which is not a sky-sign and which—

(a) is exhibited within the window of any building, or

(b) relates to the trade or business carried on within the land or building upon or over which advertisement is exhibited, or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in the same, or

(c) relates to the name of the land or building upon or over which the advertisement is exhibited, or the name of the owner or occupier of such land or building, or

(d) relates to the business of any railway administration, or

(e) is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street.

Explanation 1.—The word “structure” in this section shall include any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2.—“Public place” shall, for the purpose of this section mean any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not.

193. Prohibition of advertisement without written permission of Mukhya Nagar Adhikari.—(1) No advertisement shall, after the levy of the tax under Section 192 has been determined upon by the Mahapalika, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the City or shall be displayed in any manner whatsoever in any place without the written permission of the Mukhya Nagar Adhikari.

(2) The Mukhya Nagar Adhikari shall not grant such permission if—

(i) the advertisement contravenes any bye-law made by the Mahapalika under ¹[clause (48)] of Section 541, or

(ii) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2) in the case of any advertisement liable to the advertisement tax, the Mukhya Nagar Adhikari shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission :

Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the railway premises or relating to the business of any railway administration.

194. Permission of the Mukhya Nagar Adhikari to become void in certain cases.—The permission granted under Section 193 shall become void in the following cases, namely—

(a) if the advertisement contravenes any bye-law made by the Mahapalika under ²[clause (48)] of Section 541 ;

(b) if any addition to the advertisement be made except for the purpose of making it secure under the direction of the Mukhya Nagar Adhikari ;

(c) if any material change be made in the advertisement of any part thereof ;

(d) if the advertisement or any part thereof falls otherwise than through accident ;

(e) if any addition or alteration be made to, or in the building, wall or structure upon or over which the advertisement is erected, exhibited, fixed or retained if such addition or alteration involves the disturbance of the advertisement or any part thereof ; and

(f) if the building, wall or structure upon or over which the advertisement is erected, exhibited, fixed or retained be demolished or destroyed.

195. Beneficiary from advertisement to be deemed responsible.—Where any advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure in contravention of the provisions of Section 192 or Section 193 or after the written permission for the creation, exhibition, fixation or retention thereof for any period shall have

1. Subs. by U. P. Act XXIII of 1961.

2. Ibid.

expired or become void, the person for whom or for whose purposes the advertisement has *prima facie* been so erected, exhibited, fixed or retained shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in such contravention unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

196. Removal of unauthorised advertisements.—If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of Section 192 or Section 193 or after the written permission for the erection, exhibition fixation or retention thereof for any period shall have expired or become void, the Mukhya Nagar Adhikari may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or property and have the advertisement removed.

197. Exemption from theatre tax.—The theatre tax shall not be leviable in respect of—

- (a) any entertainment or amusement for admission to which no charge is made or only a nominal charge is made ;
- (b) any entertainment or amusement which is not open to the general public on payment ;
- (c) any entertainment or amusement the full proceeds of which, without the deduction of expenses, are intended to be utilized for a public charitable purpose.

Explanation.—For the purposes of this section a nominal charge shall be such charge as may be fixed by the rules.

198. Power to fix octroi limits.—(1) When a Cantonment authority with the sanction of the Central Government has agreed with the Mahapalika of an adjoining City that the same octroi or toll limits shall be established for the Cantonment and the City, and that octroi or toll collections and charges shall be divided between the Cantonment fund and the Mahapalika fund, the octroi or toll limits fixed by rules shall include so much both of the Cantonment and of the area of the City as the State Government deems necessary.

(2) The Mahapalika shall have the same powers of collecting octroi on animals or goods brought within such limits or tolls on vehicles and other conveyances, animals and laden coolies emerging from such limits, and the provisions of this Act relating to octroi and toll shall apply in the same way as if such limits were wholly within the City.

Imposition of Taxes

199. Framing of preliminary proposals.—(1) When a Mahapalika desires to impose a tax specified in sub-section (2) of Section 172 it shall by resolution direct the Executive Committee to frame proposals specifying—

- (a) the tax, being one of the taxes described in sub-section (2) of Section 172 which it desires to impose ;
- (b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far

as any class or description is already sufficiently defined under clause (a) or by this Act ;

(c) the amount or rate leviable from each such person or class of persons ;

(d) any other matter referred to in Section 219 which the State Government requires by rule to be specified.

(2) Upon a resolution being passed under sub-section (1) the Executive Committee shall frame the proposals and also prepare a draft of the rules which it desires the State Government to make in respect of the matters referred to in Section 219.

(3) The Executive Committee shall, thereafter, publish in the manner prescribed by rule the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form to be prescribed by rule.

Comments

Analogous Law.—Section 199 to 205 of this Adhiniyam are analogous to Section 131 to 137 of the Municipalities Act.

Taxation—Procedure must be strictly complied with.—Taxation to be valid must be levied, assessed and realised in strict conformity with the statute which authorises it, vide *Raghuendra Kripal v. M. B. Hapur*¹ and *Municipal Board, Hapur v. Raghuendra Kripal*.² If a special resolution imposing the tax, other than a tax mentioned in Section 172 (1) of the Adhiniyam, had been passed in accordance with the stages prescribed and a copy of the special resolution had been sent to the Government or to the prescribed authority and if the special resolution had then been notified, then the notification would have been a conclusive proof that the tax had been imposed in accordance with provisions of the Act. But where the very foundation of the authority given under Section 135 of the Act is lacking, namely the existence of a special resolution under Section 134 of the Act, then the notification of any alleged special resolution was quite outside the competence of the State Government or the prescribed authority and in such a case, despite the notification there would be no conclusiveness in regard to the procedure under the Act. It was so held having followed *Azimullah v. S. K. Singh*³ ; *Municipal Board, Jhansi v. D. P. Agrawal*⁴ ; *Kedar Nath v. Municipal Board, Gorakhpur*,⁵ and *Om Prakash Sharma v. State of U. P.*⁶ Also see *Municipal Board Benares v. Jokhun*.⁷

1. 1958 A. L. J. 857.

2. 1960 A. L. J. 185 (D. B.).

3. A. I. R. 1957 Alld. 307 (310).

4. 1956 A. L. J. 139 (141) (D. B.) : 1956 A. W. R. 223.

5. 1956 A. L. J. 198 (D. B.).

6. 1959 A. L. J. 501 (503).

7. A. I. R. 1939 Alld. 394 (D. B.).

Taxation—Superseded Municipal Board.—Procedure has still to be followed. See *Kedur Nath v. Municipal Board, Gorakhpur*.¹

Notification—When conclusive evidence.—When all the formalities prescribed in Section 134, 135 and 136 of the Municipalities Act, had been complied with and a copy of the special resolution had been sent to the Govt. and if the special resolution had then been notified, then the notification would have been conclusive proof otherwise not, vide *Azimullah v. S. K. Singh*² and *Municipal Board, Hapur v. Raghendra Kripal*.³ In the latter case it was also held that the provisions of sub-section (3) of Section 135 of the Municipalities Act do not bar the proving of the non-compliance of any provisions of the Act relating to the procedure for the imposition of the tax. However, in an earlier Division Bench case (*Emperor v. Har Dutt*)⁴ it was held that whether the tax is in accordance with the provisions of the Municipalities Act or not is concluded by the fact that the imposition of the tax has been notified in the *Gazette* by the Government. After the notification it is not open to anybody to question the validity of the tax but as above a different view was taken in *Raghendra Kripal v. M. B. Hapur*⁵ holding that notification is only a rebuttable presumption.

200. Procedure subsequent to framing proposals.—(1) Any inhabitant of the City may, within two weeks from the publication of the said notice, submit to the Mahapalika an objection in writing to all or any of the proposals framed under the preceding section, and the Mahapalika shall take any objection so submitted into consideration and pass orders thereon by special resolution.

(2) If the Mahapalika decides to modify the proposals of the Executive Committee, or any of them the Mukhya Nagar Adhikari shall publish the modified proposals and, if necessary, revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection.

(3) Any objections which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1).

(4) When the Mahapalika has finally settled its proposals, the Mukhya Nagar Adhikari shall submit them along with the objections (if any) made in connection therewith to the State Government.

201. Power of State Government to reject, sanction or modify proposal.—Upon receipt of the proposals and objection under the preceding section the State Government may either refuse to sanction the proposals or return them to the Mahapalika for further consideration or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as it seems fit.

202. Resolution of Mahapalika directing imposition of taxes.—(1) When the proposals have been sanctioned by the State Government, the State Government, after taking into consideration the draft rules submitted by the Mahapalika, shall proceed forthwith to make such rules in respect of the tax as for the time being it considers necessary.

1. 1956 A. L. J. 198 (D. B.).

2. A. I. R. 1957 Aild. 307 (3.0).

3. 1960 A. L. J. 185 (D. B.).

4. 1936 A. L. J. 962 (964) (D. B.) : 1936 A. W. R. 840 : 1936 Aild. 743.

5. 1958 A. L. J. 857 (862).

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the Mahapalika, and thereupon the Mahapalika shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution.

203. Imposition.—(1) A copy of the resolution passed under Section 202 shall be submitted to the State Government.

(2) Upon receipt of the copy of the resolution the State Government shall notify in the official *Gazette*, the imposition of the tax from the appointed date, and the imposition of tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provision of this Act.

Comments

Analogous Law.—Section 135 of the U. P. Municipalities Act.

Notification in Gazette—Whether conclusive proof—No :—See headnote below.

Sub-section (3)—Ultra vires Art. 14 of the Constitution.—This section is designed to withdraw a subject which lies within the exclusive province of the Court and hand it over to the State Government. This simply cannot be done; decision of question of law must continue to remain within the exclusive jurisdiction of the Court. The most that the legislature can do is to frame a law raising a rebuttable presumption; but it cannot be allowed to raise a conclusive presumption. Otherwise also it is illegal in as much as it gives the State Government power which it cannot possess under the law, vide *Raghvendra Kripal v. M. B. Hapur*,¹ a case in respect of the analogous provisions in Section 135 (3) of the Municipalities Act.

201. Procedure for altering taxes.—The procedure for abolishing a tax, or for altering a tax in respect of the matters specified in clauses (b) and (c) of sub-section (1) of Section 199 shall, so far as may be, be the procedure prescribed by Sections 199 to 202 for the imposition of a tax.

Comments

Analogous Law.—Section 136 of the U. P. Municipalities Act.

Alteration or abolition of a tax.—It includes enhancement of the rates of tax as well.—In every case, the procedures prescribed in Sections 199 to 202 of this Act has to be compulsorily followed, vide *Azimulla v. S. K. Singh*². This section also provides that the alteration of a tax shall in all cases be subject to the condition that such alteration has been notified vide *Municipal Board, Jhansi v. D. P. Agrawal*³. See notes under Section 174 of this Act as well

Words "so far as may be"—"Scope."—The words "so far as may be" in Section 136 of the Municipalities Act do not suggest that it is open to the Board to disregard the procedure, unless a disregarding of that procedure

1. 1958 A. L. J. 857 (863).

2. A. I. R. 1957 All. 307(310).

3. 1956 A. L. J. 139(141) (D. B.) : 1956 A. W. R. 223.

is essential for the purpose of effecting an alteration of a tax. The most important part is the procedure relating to the imposition of a tax which must necessarily be by the special resolution imposing the tax. In a matter of taxation, legislative or other authority, to which the power of imposition of a tax is delegated must necessarily do some thing of an unequivocal character which will show that it has imposed a tax. No looseness can be permitted in the imposition of a liability, or of tax, vide *Azimulla v. S. K. Singh*.¹

205. Power of State Government to remedy or abolish tax.—

(1) Whenever it appears, on complaint made or otherwise to the State Government, that the levy of any tax is contrary to the public interests or that any tax is unfair in its incidence, the State Government may, after considering the explanation of the Mahapalika concerned, by order require such Mahapalika to take measures within a time to be specified in the order, for the removal of any defect which it considers to exist in the tax or in the method of assessing or collecting the tax.

(2) Upon the failure or inability of the Mahapalika to comply, to the satisfaction of the State Government, with an order made under sub-section (1), the State Government, may by notification, suspend the levy of the tax, or of any portion thereof, until the defect is removed, or may abolish or reduce the tax.

206. Power of State Government to require Mahapalika to impose taxes.—(1) The State Government may, by general or special order, published in the official *Gazette*, require a Mahapalika to impose any tax mentioned in sub-section (2) of Section 172 not already imposed, at such rate and within such period as may be specified in the notification, and the Mahapalika shall thereupon act accordingly.

(2) The State Government may require a Mahapalika to increase, modify or vary the rate of any tax already imposed and thereupon the Mahapalika shall increase, modify or vary the tax as required.

(3) If the Mahapalika fails to carry out the order passed under sub-sections (1) or (2), the State Government may pass suitable order imposing, increasing, modifying or varying the tax and thereupon the order of the State Government shall operate as if it had been a resolution duly passed by the Mahapalika.

Comments

Analogous Law.—Section 130-A Municipalities Act.

Power of State Government—On failure Government could itself impose tax—Procedure—Sections 199 to 205 must still be followed.—This section is divided into three sub-sections. The first enables the State Government to issue a direction to the Board to impose a tax. The second empowers the Government to require a Board to increase, modify or vary the rate of any tax already imposed. The third deals with the situation where a Board has failed to carry out the orders of the Government requiring it either to impose or to alter a tax. It says that in such a situation the State Government may itself pass an order imposing, increasing, modifying or varying the tax. Then comes the vital sentence explaining the legal effect of such an order. It says, "Thereupon the order of the State Government shall operate as if it had been a resolution, duly passed by the Board".

1. A. I. R. 1957 All. 307 (310).

It is clear from the language of this section that the State Government has the power to fill up the gap created by the failure of the Board to carry out its directions by passing an order which will be treated in law as a resolution validly passed by the Board. Such an order cannot of itself have the effect of imposing a tax on the inhabitants of the Municipality but may be treated as equivalent to a resolution passed by the Board. In other words, the order of the State Government shall be treated as the first step which would have been taken by the Board itself, if it had agreed to the suggestion of the Government. But it does not preclude the necessity of following all the other subsequent steps nor does it empower the State Government to short-circuit the procedure laid down in the Act and make a short-cut to the final stage of notification of imposition of the tax under Section 135(3) of the Act, vide *O. P. Sharma v. State of U. P.*¹

Assessment and Levy of Property Taxes

207. Preparation of assessment list.—The Mukhya Nagar Adhikari shall cause an assessment list of all buildings or lands or both in the City to be prepared, containing—

- (a) the name of the street or *mohalla* in which the property is situated ;
- (b) the designation of the property, either by name or by number sufficient for identification ;
- (c) the names of the owner and occupier, if known ;
- (d) the annual letting value or other particulars determining the annual value ; and
- (e) the amount of the tax assessed thereon.

Comments

Analogous Law.—Section 141 of the U. P. Municipalities Act.

208. Publication of list.—[When assessment list for the whole of the City or of any ward thereof containing the particulars mentioned in clauses (a) to (e) of Section 207 has been prepared]² the Mukhya Nagar Adhikari shall give public notice of the place where ²[that list] or a copy thereof may be inspected, and every person claiming to be either owner or occupier of property included in ²[that list] and an agent of such person shall be at liberty to inspect [that list]² and to make extra extracts therefrom without charge.

Comments

Analogous Law.—Section 142 of the U. P. Municipalities Act

209. Objections to entries in list.—(1) The Mukhya Nagar Adhikari shall at the same time give public notice of a date, not less than one month thereafter, when the Executive Committee will proceed to consider the valuation and assessment ²[entered in the list mentioned in Section 208] and in all cases in which any property is for the first time assessed or the assessment is increased, he shall also give notice thereof to the owner or occupier of the property, if known.

1. 1959 A. L. J. 501(503).

2. Subs. by Act No. 8 of 1970.

(2) All objections to valuations and assessments shall be made to the Mukhya Nagar Adhikari, before the date fixed in the notice, by application in writing stating the grounds on which the valuation and assessment are disputed, and all applications so made shall be registered in a book to be kept by the Mukhya Nagar Adhikari for the purpose.

(3) The Executive Committee or a sub-committee thereof appointed by the Executive Committee in this behalf, shall, after allowing the applicant an opportunity of being heard in person or by agent—

- (a) investigate and dispose of the objection ;
- (b) cause the result thereof to be noted in the book kept under sub-section (2) ; and
- (c) cause any amendment necessary in accordance with such result to be made in the assessment list.

Comments

Analogous Law.—Section 143 of the U. P. Municipalities Act. Notice before disposal of objections is mandatory. See Head note “Notice” under Section 473.

210. Authentication and custody of list.¹—(1) After the disposal of all objections pertaining to the list for the city or of any word thereof, as the case may be, the Chairman of the Committee or of the Sub-Committee concerned, if any, shall authenticate by his signature that list as well as all amendments made therein under sub-section (3) of Section 209.

(2) Every list so authenticated shall be deposited in the office of the Mahapalika.

(3) As soon as the list for the entire city is so deposited it shall be declared by public notice to be open for inspection.]

211. Revision and duration of list.—(1) A new assessment list shall ordinarily be prepared in the manner prescribed by Sections 207 to 210 once in every five years.

(2) Subject to any alteration or amendment made under Section 213 and to the result of any appeal under Section 472 every valuation and assessment entered in an valuation list shall be valid from the date on which the list takes effect in the City and ²[untill the first day of April or the first day of October next following the completion of the new list whichever is earlier.]

(3) [Provided that where as a result of any order or adjudication of a court of law the new assessment list or [any portion thereof cannot take effect, the old assessment list or] the corresponding portion thereof shall, subject to such order or adjudication, be deemed to have continued to be effective.]

1. Subs. by Act No. 8 of 1970.

2. Subs. *ibid*.

212. Conclusiveness of entries in li t.—An entry in an assessment list shall be conclusive proof—

- (a) for any purpose connected with a tax to which the list refers, of the amount leviable in respect of any building or land during the period to which the list relates, and
- (b) for the purpose of assessing any other Mahapalika tax, of the annual value of any building or land during the said period.

213. Amendment and alteration of list—(1) The Executive Committee or a sub-committee thereof appointed in this behalf may at any time alter or amend the assessment list—

- (a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation after the authentication of the assessment list ; or
- (b) by substituting therein for the name of the owner or occupier of any property the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property ; or
- (c) by enhancing the valuation of, or assessment on, any property which has been incorrectly valued or assessed by reason of fraud misrepresentation or mistakes ; or
- (d) by revaluing or re-assessing any property the value of which has been increased by additions or alteration to buildings ; or
- (e) where the percentage on the annual value at which any tax is to be levied has been altered by the Mahapalika under the provisions [of this Act]¹ by making a corresponding alteration in the amount of the tax payable in each case ; or
- (f) by reducing upon the application of the owner or on satisfactory evidence that the owner is untraceable and the need for reduction established, upon its own initiative, the valuation of any building which has been wholly or partly demolished or destroyed or ;
- (g) by correcting any clerical, arithmetical or other apparent error :

Provided that the Executive Committee or the sub-committee, as the case may be, shall give at least one month's notice to any person interested in any alteration [or amendment]² which the Executive Committee or sub-committee proposes to make under clauses (a), (b), (c) or (d) of sub-section (1), and of the date on which the alteration will be made.

³[(1-A). For the removal of doubts it is hereby declared that it shall not be necessary to follow the procedure laid down in Sections 199 to 203 or in Sections 207 to 210 in respect of any alteration made under clause (e) of

1. Subs. by U. P. Act XXIII of 1961.

2. Subs. by U. P. Act XXI of 1964.

3. Ins. by U. P. Act XXI of 1964 and shall be deemed always to have been inserted.

sub-section (1) as a result of a determination of the rate of tax under Section 148.]

(2) The provisions of sub-sections (2) and (3) of Section 209 applicable to the objections thereunder mentioned shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(3) Every alteration [or amendment]¹ made under sub-section (1) shall be authenticated by the signature or signatures of the person authorized by Section 210 and, subject to the result of an appeal under Section 472, shall take effect from the date on which the next instalment falls due.

Comments

Analogous law—Section 147 of the U. P. Municipalities Act.

Amendment or alteration of list—One month's notice to the person interested in such alteration is mandatory. Alteration is subject to appeal under Section 472 of this Act and it is to take effect from the date on which the next instalment falls due.

Incorrectly valued—Sub-Section (1) (c)—Scope—Chapter V of the Municipalities Act (analogous to Chapter IX of the present Act) deals with the imposition and alteration of taxes. Certain procedure is to be followed before taxes are imposed. Thereafter the assessment and the preparation of the assessment list are also to be made in accordance with the detail and elaborate procedure provided under the Act. In case where the assessment list was prepared in the year 1951 and the Committee accepted Rs. 7,500/- as the annual rental value of the building, Section 147 does not contemplate, that if in future some other officer considers that the rental of the building is higher than what was estimated to be in the past by a competent authority, to amend the assessment list.

The preparation of the assessment list does not depend upon the estimate of an individual officer as regards the rental value of a premises. The value is to be assessed on certain accepted principles given in the Act, and after due enquiry. Section 147 (1) (c) expressly provides that the power to amend the assessment list arises only if the valuation or assessment of any property had been incorrectly made by reason of fraud, misrepresentation or mistake. The ground on which the amendment has been ordered is one of mistake.

The mistake which gives right to the Board to alter or amend the assessment list is a mistake of fact and not a different view taken by any officer as regards the valuation or assessment of the property. Principles have been laid down for ascertaining the value of the property and elaborate procedure of enquiry is laid down in the Act before the actual assessment is made. The mistakes, under Section 147 (1) (c) which have resulted in incorrect valuation or assessment, necessarily imply the mistakes in the application of the principles laid down earlier for finding out the valuation of the property or in the process of enquiry.

If in the course of enquiry any document has been misread or there has been an obvious wrong application of the principles on which the value is to be ascertained under the Act it may be said that incorrect valuation has been arrived at in the past by reason of mistake. But the mistake cannot be assumed merely on the ground that an officer later on thinks that according to his opinion the valuation arrived at earlier was wrong, vide *Brijpal Das v. Benaras Municipal Board* ²

1. Subs. by U. P. Act XXI of 1964.

2. A. I. R. 1958 Alld. 211 (214)

Order of substitution or mutation—Appeal lies under Section 472—Section 472 (2) (d) and 473 (c) clearly indicate that the Legislature contemplated appeals against all orders of alterations and amendments in the assessment list made under Section 213 (1). In addition to this, the express words of sub-Section (1) of Section 472 also cover a case of substitution or mutation in the assessment list of the names of the successors for that of the original owner or occupier. In such a case the successors become liable to the tax and it can be said that they are charged with the payment of tax in place of the original owner or occupier. Thus the substitution or mutation order is an order charging the successors with payment of tax and clearly false within the ambit of Section 472 (1). Consequently an order under Section 213 (1) (b) directing substitution or mutation of the names of the successors in place of the original owner or occupier is subject to appeal, vide *Kailash Nath v. Raghubar Dayal*¹.

214. Obligation to supply information for purposes of amendment.—When a building is built, re-built or enlarged, the owner shall give notice thereof to the Mukhya Nagar Adhikari within fifteen days from the date of completion of such building, re-building or enlargement, or from the date of the occupation of such building, whichever date happens first.

215. Obligation to give notice of re-occupation.—The owner of a building or land for which a remission or refund of the tax has been given under Section 173 shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

216. Consolidation of taxes.—For the purpose of assessing, levying or collecting, but not for the purpose of imposing or granting exemption from, the property taxes described in Section 173 a Mahapalika may consolidate any two or more of such taxes :

Provided that in any register or assessment list relating to a consolidated tax and used for the purpose of informing a person of his liability thereunder or for the purpose of securing compliance with the provisions of Section 175 or Section 176 the Mukhya Nagar Adhikari shall, in the manner prescribed, apportion the consolidated tax amongst the several taxes comprised therein, so as to show approximately the amount assessed or collected on account of each separate tax.

217. Deduction required by exemptions.—(1) In assessing a consolidated tax effect shall be given to any partial or total exemption from any single tax comprised therein.

(2) Such effect shall be given—

(a) in the case of partial exemption, by means of the deduction from the total amount of the consolidated tax which would otherwise be leviable or assessable in respect of any buildings, or lands or both, to which the exemption applies, of a proportionate part, corresponding to the exemption, of the amount which might otherwise have been assessed on account of the single tax, and

(b) in the case of a total exemption, by means of the deduction from such total amount of the whole amount assessed on account of the single tax.

218. Summary proceedings may be taken against persons about to leave the City.—(1) If any sum recoverable under the provisions of this Chapter is due or is about to become due from any person, and if the

1. 1969 A. W. R. 595 (596) (D. B.) : 1969 A. L. J. 577.

Mukhya Nagar Adhikari shall have reason to believe that such person is about to leave the limits of the City the Mukhya Nagar Adhikari may direct the immediate payment by such person of such sum and cause a bill for the same to be presented.

(2) If, on presentation of such bill, the said person does not forthwith pay the said sum or does not furnish security to the satisfaction of the Mukhya Nagar Adhikari, the amount shall be levied by distress and sale of his movable property or by attachment and sale of his immovable property in the manner specified in Chapter XXI except that it shall not be necessary to serve upon him any notice of demand and the Mukhya Nagar Adhikari's warrant for distress and sale may be issued and executed without any delay.

Other Matters

219. Rules as to assessment, collection and other matters.—The following matters shall be regulated and governed by rules except in so far as provision therefor is made by this Act, namely—

- (a) the assessment, collection or composition of taxes, and, in the case of octroi or toll, the determination of octroi or toll limit ;
- (b) the prevention of evasion of taxes ;
- (c) the system on which refunds shall be allowed and paid ;
- (d) the fees for notices demanding payments on account of a tax and for the execution of warrants of distress ;
- (e) the rates to be charged for maintaining livestock distrained ; and
- (f) any other matters relating to taxes in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the State Government, necessary.

Comments

Analogous Law.—Section 153 of the U. P. Municipalities Act.

Liability of payment of Octroi—When ceases.—There is nothing in the U. P. Municipalities Act or in the rules made thereunder, as was held in *Debi Charan v. Municipal Board, Rae Bareilly*,¹ which leads to the conclusion that liability to pay octroi is of a continuing nature. It ceases as soon as the goods passed on finally beyond the barriers because the octroi is to be levied during the period the goods in question and never subsequently, vide *Debi Charan Gupta v. Municipal Board, Rae Bareilly*.¹ But there is yet another different view which lays down that once it is established that a liability to pay an amount is created that liability can only be discharged either by payment of the said amount or by some other method provided by law. The fact that the amount is not recoverable by a resort to law courts does not mean that the liability itself has been wiped off. The liability exists even after the introduction of the goods within the Municipal limits also, vide *Municipal Board, Hardoi v. State*.²

Scope.—The matters enumerated in this Section include, assessment, collection or composition of taxes. The language of this section shows that the rules framed under this section constitute the exclusive machinery for the assessment and collection of taxes and not for recovery of taxes. A

1. A. I. R. 1955 N. U. C. 3834 (Ahd.).

2. A. I. R. 1955 All. 109 (111).

civil suit for recovery of taxes is as such excluded by necessary implication and no civil suit can be maintainable for recovery of municipal toll tax. See *B. B. Lal v. Municipal Board, Muzaffarnagar*¹ and *Municipal Board, Bareilly v. Abdul Aziz Khan*.² But this view now stands overruled by the full Bench decision in *Union of India v. Nagar Mahapalika, Allahabad*³ in view of the Supreme Court's decision in *Kripal Singh v. Municipal Board*.⁴

220. Composition.—(1) Subject to the provisions of any rule, a Mahapalika may, by a special resolution confirmed by the State Government, provide that all or any persons may be allowed to compound for a tax.

(2) Every sum due by reason of the composition of a tax under subsection (1) shall be recoverable in the manner provided by Chapter XXI.

221. Exemption.—(1) A Mahapalika may exempt, for a period not exceeding one year, from the payment of a tax, or any portion of a tax imposed under this Act, any person who is in its opinion, by reason of poverty unable to pay the same, and may renew such exemption as often as it deems necessary.

(2) A Mahapalika may, by a special resolution confirmed by the State Government, exempt from the payment of a tax, or any portion of a tax, imposed under this Act, any person or class of persons or any property or description of property.

(3) The State Government may, by order, exempt from the payment of a tax, or any portion of a tax, imposed under this Act, any person or class of persons or any property or description of property.

222. Obligation to disclose liability.—(1) The Mahapalika may by written communication call upon an inhabitant of the City to furnish such information as may be necessary in order to ascertain—

(a) whether such inhabitant is liable to pay a tax imposed under this Act ;

(b) at what amount he should be assessed ;

(c) the annual value of the building or land which he occupied and the name and address of the owner.

(2) If an inhabitant so called upon to furnish information omits to furnish it or furnishes information which is untrue, he shall be liable upon conviction to a fine which may extend to five hundred rupees.

Comments

Analogous Law.—Section 158 of the U. P. Municipalities Act.

223. Powers of discovery.—The Mukhya Nagar Adhikari or any other officer or servant of the Mahapalika authorised in this behalf may enter, inspect and measure a building for the purposes of valuation, or enter and inspect a stable, coach house or other place wherein, there is reason to believe that there is a vehicle or animal liable to taxation under this Act and the provisions of Sections 560, 562 and 563 shall apply to such inspections.

1. 1971 A. L. J. 185 (187) (D. B.) : 1971 A. W. R. 100.

2. 1934 A. L. J. 179 : 1934 (4) A. W. R. 314.

3. 1971 A. W. R. 776 (784) (F. B.).

4. A. I. R. 1968 S. C. 1416.

224. Savings.—No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstances shall be invalid by reason only of the mistake in the name, residence, place of business or occupation of the person, or in the description of the property, thing or circumstances, or by reason of any more clerical error or defect of form and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

Supplementary Taxation

225. Any tax imposable under this Act may be increased or newly imposed by way of imposing supplementary taxation.—Whenever the Mahapalika determines to have recourse to supplementary taxation in any financial year, it shall do so by increasing, for the unexpired portion of the said year, the rates at which any tax imposable under this Act is being levied, subject to the limit and conditions for such tax prescribed in this Act or in the orders or sanction of the State Government or by levying, with due sanction, a tax imposable under this Act but not being levied at the time being.

226. Bar to jurisdiction of Civil and Criminal Courts in matters of taxations.—No objection shall be taken to a valuation or assessment nor shall the liability of a person to be assessed or taxed be questioned in any other manner or before any other authority than is provided in this Act.

Comments

Analogous Law.—Section 164 (1) of the U. P. Municipalities Act.

Bar to jurisdiction.—(i) *Civil Court*—Section 9 of the Civil Procedure Code lays down that a Civil Court has jurisdiction to try suits of a Civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Section 49 of the present Adhiniyam takes away that jurisdiction of the Civil Courts in respect of the orders passed by the Officers in respect of the elections and Section 226 regarding assessment, etc., under this Adhiniyam but there are exempting circumstances as well.

In *Secretary of State v. Mask & Co.*,¹ their Lordships of the Privy Council had held :

“It is settled law, that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure”.

This principle was quoted and followed in *Smt. Abida Begum v. Rent Control & Eviction Officer, Lucknow*.²

In the case of *M. Govind Ram v. Mukhtar Hussain*³ it was held :

1. A. I. R. 1940 P. C. 105.
2. 1959 A. L. J 704 (711) (D. B).
3. 1957 A. L. J. 486 (487).

"It is not the order which is called in question.....but it is the jurisdiction of the Officer that was challenged.....but if..... the Officer would have no jurisdiction to make his order and his order would be without jurisdiction and illegal and void order and that can certainly be challenged in a Civil Court....."

See *Valli v. Corporation of Madras*¹ ; *Basu v. Nadar*² ; *Sardar Mohammad Nawaz Khan v. Bhagwatanand*³ ; *Manager court of Wards v. Seth Mool Chand Seth Hira Lal Oswal*⁴ ; *Abdul Majid Haji Mohammad v. P. G. Nayak*⁵ ; *Raja Bhagwan Bux Singh v. Secretary of State*⁶ ; *Secretary of State v. Roy Jitendra Nath Chowdhry*⁷ ; *Colonial Bank Australian v. William*⁸ ; *Kashmiri Lal v. Emperor*⁹ ; *R. N. Seth v. Girja Shanker Srivastava*¹⁰ ; *Ahmadi Begum v. The District Magistrate*¹¹ ; *Babu Lal v. Ganga Saran*¹² ; *Ram Chandar v. Mohan Lal Tewari*¹³ ; *Bhakt Shiromani v. Rent Control & Eviction Officer*¹⁴ ; *Banmul Soanmoi v. Harak Chand Rup Chand*¹⁵ ; *Amrit Lal Chatterjee v. State*¹⁶ ; *Ram Chandra v. District Magistrate*¹⁷ ; *Province of Bombay v. Khushaldas S. Advani*¹⁸ ; *A. G. Mohammad v. Sailendra Nath Mitter*¹⁹ ; *Patri Sgaw v. R. N. Roy*²⁰ ; *Secretary of State v. Fahamidannisa Begum*.²¹

1. (1915) 38 Mad. 48.
2. A. I. R. 1940 Lahore 217.
3. A. I. R. 1938 P. G. 219.
4. A. I. R. 1941 Nag. 226.
5. A. I. R. 1951 Bom. 440 ; Also A. I. R. 1948 P. G. 33, A. I. R. 1922 Pat. 361 ; 1942 Lahore 170 ; 1949 E. P. 27.
6. 671 A. 197 ; A. I. R. 1940 P. G. 82.
7. A. I. R. 1924 P. C. 175.
8. L. R. 5 P. C. 47.
9. 19 A. L. J. R. 541.
10. A. I. R. 1952 All. 819 : 1952 R. D. (H. C.) 79 (D. B.).
11. 1951 A. L. J. 669 : A. I. R. 1951 All. 830 : 1951 R. D. (H. C.) 233.
12. 1951 A. L. J. 746 : A. I. R. 1952 All. 48 : 5 D. L. R. (All.) 42.
13. 1954 A. L. J. 223 : A. I. R. 1954 All. 457 : 1954 A. W. R. (H. C.) 254.
14. 1953 A. L. J. 553 : A. I. R. 1954 All. 118 : 1953 A. W. R. (H. C.) 541.
15. A. I. R. 1948 Mad. 394.
16. A. I. R. 1950 Cal. 543 : 5 D. L. R. (Cal.) 130.
17. 1952 A. L. J. 114 : A. I. R. 1952 All. 520 : 1952 A. W. R. (H. C.) 576.
18. A. I. R. 1950 S. C. 22.
19. 54 G. W. N. 642.
20. 54 G. W. N. 855.
21. 17 Cal. 59 : 17 I. A. 40.

*S. K. Shaw & Brothers v. Brij Raj Kishore*¹; *Kedar Nath v. Mool Chand*²; *Prem Narain Tayal v. Ram Chandra Khare*³; *Ram Narayan Tayal v. Ram Chandra Sharma*⁴; *Chandmal Jaskaran v. Chhangam Lal Pratap*⁵; *Dhorendra Krishna Mukirji v. Nehor Ganguly*⁶; *Sheo Narain Rathi v. Addl. Deputy Commissioner, Nagpur*⁷; *Ram Gopal v. State of U. P.*⁸ and *Brij Raj Kishore v. S. K. Shaw & Bros.*⁹

(ii) *Criminal Courts*.—A Criminal Court is not at all restrained, as is the fundamental principle of criminal jurisprudence, from considering the validity of the order in question or whether it was passed by the authority within its own compass or not and unless the order in question fulfils this qualification no criminal court will prosecute for such an order. The Supreme Court supports this view in *Nainital Municipality v. Brij Mohan*,¹⁰ but a different view appears to have been taken in *H. S. Mills v. Dy. Comr. Kheri*¹¹. Also see Headnote "Criminal Court's jurisdiction", under Section 467 in this Book.

(iii) *High Court*.—The High Court can at any stage question the validity, jurisdiction and malafides of the orders passed under this Act as these powers have been conferred upon the High Court by the constitution itself *vide* Article 226 and 227.

Exceptions where Civil Suit is not barred.—(1) Cases where a Municipal servant is punished in contravention of the provisions of this Act—*See* Headnote "Non compliance of Rules—Suit lies" under Section 110.

(2) Cases where notice issued by the Board is challenged—*See* Head Note—"Civil Court's Jurisdiction is not barred" under Section 405; "Civil Suit whether barred—No" under Section 292.

(3) Cases for refund of taxes illegally recovered—*See* Headnote "Refund of Taxes illegally recovered—Suit lies" under Section 571.

(4) Cases where Mahapalika is sued for damages—*See* Headnote "Mahapalika—Liability for damages—Yes" under Section 571 and "effect of non-compliance—Mahapalika is liable to pay damages" under Section 308 of this Act.

(5) Cases where a Municipality does not proceed with the assessment in accordance with the procedure laid down in the Act or the assessment is

1. A. I. R. 1949 Pat. 474 (Reversed in A. I. R. 1951 Supreme Court 115 on other point).

2. 1952 A. L. J. 486 : 1952 A. W. R. (H. C.) 421.

3. 1954 A. L. J. 62.

4. 1953 A. W. R. (H. C.) 59.

5. A. I. R. 1951 Madhya Bharat 63.

6. A. I. R. 1943 Cal. 266.

7. A. I. R. 1951 Nag. 22.

8. 1953 A. L. J. 54.

9. A. I. R. 1951 Supreme Court 115.

10. A. I. R. 7. 1971 S. C. 439 (442).

11. 1970 A. W. R. (Journal) 2 (D. B.).

wholly illegal and the Board has right to assess the tax under the provision of the Act, *vide* *Jokhu v. Municipal Board, Benaras*¹ *Municipal Board, Benaras v. Jokhu*,² *District Board of Farrukhabad v. Prag Dutt*,³ *Municipal Board Maunath Bhanjan v. Raghnunath Prasad*.⁴ Also see Headnote "Assessment—When can be challenged" in this section.

(6) Cases where fees other than tax is challenged.—See Headnote "Fees and not tax challenged—Civil suit lies" under Section 571 in this Act.

(7) Cases where suit is for recovery of the unpaid salary.—See Headnote "Recovery of unpaid salary of the employee" under Section 571 in this Act.

(8) Cases where distress warrant for recovery of certain amount not legally due to the Mahapalika was issued.—There is nothing in this Adhiniyam which expressly or impliedly bars the Civil Court, from considering the validity of the action being taken by the Board under Section 169 of the Municipality Act, corresponding to Section 507 of this Adhiniyam. See *Municipal Board, Mathura v. Mansa*.⁵ See the Headnote "Distress warrant—Is it of—Can be challenged in Civil Court" under Section 507 in this Commentary.

(9) Suit for arrears of octroi duty and toll by a Mahapalika.—See *Union of India v. Nagar Mahapalika, Allahabad*,⁶ *S. K. Duggal v. M. B. Gazipur*,⁷ Also see Headnote "Scope" in Section 219 in this Book.

Assessment—Meaning and Scope.—It means assessment in accordance with the provisions of the Act. A flagrant disregard by the Mahapalika of the provisions of this Act was no mere irregularity as these provisions relating to assessments and to the fixing of the liability of owners of property are mandatory, *vide* *Municipal Board Benaras v. Jokhu*⁸. Also see Headnote "Assessment includes process of charging octroi duty" under Section 472 in this Book.

Assessment—When can be challenged.—The provision has been made under Section 472 of this Adhiniyam where a challenge against an impugned assessment can be made through an appeal.

The aforesaid heading "Bar to jurisdiction" in this section has dealt that in what circumstances, a suit can lie to challenge it.

Now, another aspect of such challenge is a criminal prosecution against a person. Where in a case a person is prosecuted for his failure to pay the octroi duty assessed by the Octroi Superintendent, it is open to him to allege

1. 1937 A. L. J. 1286 (1283) : 1937 A. W. R. 1135 : 1938 Alld. 66 : 173 I. C. 868.

2. 1939 A. L. J. 183 (D. B.) : 1939 Alld. 394.

3. A. I. R. 1948 Alld. 382 (F. B.) : 1948 A. L. J. 338.

4. A. I. R. 1954 Alld. 121 (122) (D. B.).

5. A. I. R. 1951 Alld. 634 (635).

6. 1939 A. L. J. 183 (187) (D. B.) : 1939 Alld. 394.

7. 1971 A. W. R. 776 (784) (F. B.).

8. 1968 A. L. J. 906 (S. C.).

in his defence that the assessment being *ultra vires* and *void*, he has committed no offence, *vide Rex v. Uttam Chand*.¹

What Suits are barred—Illustrations.—(i) Refund of security forfeited to Board—Refer Section 62. See *Nawal Kishore v. Municipal Board Gorakhpur*.²

(ii) Challenging election—circumstances—Refer Section 62. See *Nawal Kishore v. Municipal Board, Gorakhpur*.³

(iii) Dismissal of Municipal employee—Refer Section 110. See *Shanker Lal Dahania v. Bal Kishan*,³ and *R. T. Rangachari v. Secretary of State*.⁴

(iv) Claim of damages by Municipal employee on his dismissal—Refer Section 110. See *Shanker Lal Dahania v. Bal Kishan*,³ *Municipal Board, Benares v. Behari Lal and others*.⁵

(v) Suits regarding declaration about the division of functions between different Mahapalika Authorities—Refer Section 116.

227. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power such rules may provide for—

(a) matters referred to in Section 219 ;

(b) maintenance and inspection of register regarding taxes on vehicle, boat and animal ;

(c) table of rates of octroi and toll and their publication, maintenance and inspection ;

(d) the examination of articles liable to octroi ;

(e) advance payment of taxes ;

(f) summary disposal of objections to distress and attachment ;

(g) the conditions on which exemptions and refunds of taxes shall be allowed.

Comments

Analogous Law.—Some what similar in purport to Section 300 of the U. P. Municipalities Act.

Previous publication—When necessary.—Under the analogous provision of the Municipalities Act, the State Government, in respect of imposition of taxes, could make rules but those rules could be effective only when its previous publication in the official *Gazette* was made. It was held to be bounden duty of the State Government in *Kedar Nath v. Municipal Board, Gorakhpur*.⁶ Such a

1. A. I. R. 1950 Allahabad 541.

2. A. I. R. 1937 Allahabad 765 : 1937 A. L. J. 336 (D. B.).

3. 1937 A. L. J. 1227.

4. A. I. R. 1937 P. C. 27.

5. A. I. R. 1926 Alld. 538.

6. 1956 A. L. J. 198 (200) (D. B.) : 1956 A. W. R. 141.

provision requiring "previous publication" is not existing in this Section 227 of the Nagar Mahapalika Adhiniyam but provision for previous publication still exists in sub-section (3) of Section 199 relating to imposition of a tax other than a property tax by a Mahapalika (which provision is analogous to Section 131 (3) of the Municipalities Act) and, as held in Kedar Nath's case, previous publication being obligatory, it now appears, at the first instance, that when a tax is imposed by a Mahapalika then such previous publication is essential but it is not essential for the State Government in framing rules in other respects thereof except imposition but it will be again necessary for even the State Government while imposing a tax under this Adhiniyam. But it is not so. See Headnote "Previous publication" in Section 540 of this Adhiniyam.

CHAPTER X

Drains and Drainage

Mahapalika Drains

228. Drains to be constructed and kept in repair by the Mukhya Nagar Adhikari.—(1) Subject to any general directions which the Executive Committee may from time to time give in this behalf, the Mukhya Nagar Adhikari shall maintain and keep in repair all Mahapalika drains and may with the approval of the Executive Committee construct such new drains both within and without the City as shall from time to time be necessary for effectually draining the City and areas immediately around it :

Provided that no drain shall be constructed within the limits of a Cantonment without the approval of the State Government and otherwise than with the concurrence of the General Officer Commanding the Division in which such Cantonment is situate or, in the event of such concurrence being withheld, the previous sanction of the Central Government.

(2) The Mukhya Nagar Adhikari shall also, in the case of any street in which there is a municipal drain, construct at the charge of the Mahapalika Fund such portion of the drain of any premises to be connected with such a Mahapalika drain as it shall be necessary to lay under any part of such street and the portion of any connecting drain so laid under the street shall vest in the Mahapalika and be maintained and kept in repair by the Mukhya Nagar Adhikari as a Mahapalika drain.

229. Adoption by Mahapalika of drains and drainage or sewage disposal works.—(1) Subject to the other provisions of this Act the Mukhya Nagar Adhikari may at any time with the approval of the Mahapalika declare that any drain or part thereof or any drainage or sewage disposal works situate within the City or serving the City or any part thereof shall, from such date as may be specified in the declaration, become vested in the Mahapalika.

(2) The Mukhya Nagar Adhikari in deciding whether a declaration should be made under sub-section (1) shall have regard to all the circumstances of the case and, in particular, to the following considerations—

(a) whether the drain or works in question is or are adapted to, or required for, any general system of drainage or drainage disposal or sewage disposal which the Mukhya Nagar Adhikari has provided for the City or any part thereof ;

(b) whether the drain is constructed under a street or under land reserved by or under the provision of this Act or any other law for the time being in force for a street ;

(c) the number of buildings which the drain is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings ;

(d) the method of construction and state of repair of the drain or works ; and

(e) whether the making of the proposed declaration would be seriously detrimental to the owner of the drain or works in question.

(3) Whenever it is proposed to make a declaration under sub-section (1), the Mukhya Nagar Adhikari shall give written notice of the proposal to the owner or owners of the drain or works in question to show cause against it within a period of one month from the date of service and the declaration shall not be made until the expiry of the period aforesaid, or where any objection has been lodged until the objection has been disposed of.

(4) Where a declaration referred to in sub-section (1) relates to a drain or drainage or sewage disposal works situate within the jurisdiction of some local authority other than the Mahapalika or situate within the City but serving of an area, or part of an area, within the jurisdiction of such local authority, the Mukhya Nagar Adhikari shall also give notice to that authority and no declaration shall be made until either that authority has consented thereto or the State Government has dispensed with the necessity of such consent, whether unconditionally or subject to such conditions as it may think fit to impose.

(5) No declaration under sub-section (1) shall be made with respect to any drain or part of a drain or any works as is or are vested in some local authority other than the Mahapalika or the Central Government or a Railway Administration, except on the request of the authority, the Government or Railway Administration, concerned.

(6) Any person who, immediately before the making of a declaration under sub-section (1) was entitled to use the drain in question shall notwithstanding the declaration be entitled to use it, or any drain substituted therefor, to the same extent as previously.

230. Power of making drains.—(1) The Mukhya Nagar Adhikari may carry any Mahapalika drain through, across or under any street or any place laid out as or intended for a street or under cellar or vault which may be under any street, and, after giving reasonable notice in writing to the owner or occupier, into, through or under any land whatsoever within the City or, for the purpose of outfall or distribution of sewage, without the City.

(2) The Mukhya Nagar Adhikari may enter upon, and construct any new drain in the place of an existing drain in any land wherein any Mahapalika drain has been already lawfully constructed, or repair or alter any Mahapalika drain so constructed.

231. Alteration, etc., and discontinuance of drains.—The Mukhya Nagar Adhikari may enlarge, alter the course of, deepen, lessen, arch over or otherwise improve any Mahapalika drain, and may discontinue, close up or destroy any such drain which has, in his opinion, become useless or unnecessary, or prohibit the use of any such drain either entirely or for the purpose of foul water drainage or for the purpose of surface drainage :

Provided that, if by reason of anything done under this section any person is deprived of the lawful use of any drain the Mukhya Nagar Adhikari shall, as soon as may be, provide, at the cost of the Mahapalika for his

use some other drain as effectual as the one which has been discontinued, closed up or destroyed or the use of which has been prohibited.

232. Cleansing of drains.—(1) The Mahapalika drains shall be so constructed, maintained and kept as to create the least practicable nuisance and shall be from time to time properly flushed, cleansed and emptied.

(2) For the purpose of flushing, cleansing and emptying the said drains, the Mukhya Nagar Adhikari may construct or set up such reservoirs, sluices, engines and other works as he shall from time to time deem necessary.

Drains of Private Streets and Drainage of Premises

233. Power to connect drain of private street with Mahapalika drain.—The owner of a private street may, subject to his fulfilling the conditions to be prescribed connect the drain of such street with a Mahapalika drain.

234. Right of owners and occupiers of buildings and lands to drain into Mahapalika drains.—(1) Subject to the other provisions of this section, the owner or occupier of any premises shall be entitled to cause his drain to empty into a Mahapalika drain or other place lawfully set apart for the discharge of drainage :

Provided that nothing in this sub-section shall entitle any person—

(a) to discharge directly or indirectly into any Mahapalika drain any trade effluent except in accordance with the provisions of Section 240 or any liquid or other matter the discharge of which is prohibited by or under this Act or any other law for the time being in force ;

(b) where separate Mahapalika drains are provided for foul water and for surface water to discharge directly or indirectly—

(i) foul water into a drain provided for surface water ; or

(ii) except with the permission of the Mukhya Nagar Adhikari surface water into a drain provided for foul water ; or

(c) to have his drain made to communicate directly with a storm water overflow drain.

(2) Every person desirous of availing himself of the provisions of sub-section (1) shall obtain the written permission of the Mukhya Nagar Adhikari and shall comply with such conditions as the Mukhya Nagar Adhikari may prescribe as to the mode in which and the superintendence under which connections with Mahapalika drains or other places aforesaid are to be made.

(3) The Mukhya Nagar Adhikari may, if he thinks fit, in lieu of giving permission aforesaid under sub-section (2) himself so connect the drain or sewer after giving notice to the person concerned within fourteen days of the receipt of his application. In any case where the Mukhya Nagar Adhikari proceeds under this sub-section, the reasonable expenses of any work so done shall be paid by the person aforesaid.

235. Power of Mukhya Nagar Adhikari to require drain or proposed drain to be so constructed as to form part of general system.—(1) Where a person proposes to construct a drain, the Mukhya Nagar Adhikari may, if he considers that the proposed drain is or is likely to be needed to form part of a general drainage system which the Mahapalika has provided

or proposes to provide, require him to construct the drain in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise from the manner in which he proposes to construct, and thereupon it shall be the duty of such person to comply with the requisition of the Mukhya Nagar Adhikari.

(2) The Mukhya Nagar Adhikari shall reimburse from the Mahapalika Fund to the person constructing a drain in accordance with sub-section (1), the extra expenditure reasonably incurred by him in complying with the requisition and until the drain becomes a Mahapalika drain, he shall also from time to time reimburse to him from the Mahapalika Fund so much of any expenses reasonably incurred by him in repairing or maintaining it as may be attributable to the requisition having been made and complied with.

236. Connections with Mahapalika drains not to be made except in conformity with Sections 233 and 234.—Except as provided by Sections 233 and 234 or as may be prescribed, no person shall make or cause to be made any connection of a drain belonging to himself or to some other person with any Mahapalika drain or other place lawfully set apart for the discharge of drainage, and the Mukhya Nagar Adhikari may, after giving notice to the person concerned, close, demolish, alter or remake any such connection made in contravention of this section, and the expenses incurred by the Mukhya Nagar Adhikari in so doing shall be paid by the owner of the street, or the owner or occupier of the premises, for the benefit of which the connection was made, or by the person offending.

237. Right of owners and occupiers of premises to carry drain through land belonging to other persons.—(1) If it shall appear to the Mukhya Nagar Adhikari that the only means or the most convenient means by which the owner or occupier of any premises can cause his drain to empty into a Mahapalika drain or other place lawfully set apart for the discharge of drainage, is by carrying the same into, through or under any land belonging to some person other than the said owner or occupier, the Mukhya Nagar Adhikari may, by order in writing, authorize the said owner or occupier to carry his drain into, through or under the said land in such manner as he shall think fit to allow.

(2) No authorization shall be made under sub-section (1) except after notice to the owner of the land and considering the objection, if any, filed by him:

(3) Every such order under sub-section (1) bearing the signature of the Mukhya Nagar Adhikari shall be a complete authority to the person in whose favour it is made, or his agent or servant to enter after reasonable written notice, upon the said land with assistants and workmen, at any time between sunrise and sunset and to execute the necessary work.

(4) Subject to the provisions of this Act, the owner or occupier of any premises, any agent or person employed by him for this purpose, may, after giving or tendering to the owner of any land, wherein a drain has been already lawfully constructed for the drainage of his said premises, reasonable written notice of his intention so to do, enter upon the land with assistants and workmen, at any time between sunrise and sunset and construct a new drain in the place of the existing drain or repair or alter any drain so constructed.

(5) In executing any work under this section, as little damage as may be, shall be done, and the owner or occupier of the premises for the benefit of which the work is done shall—

- (a) cause the work to be executed with the least practicable delay ;
- (b) fill in, reinstate and make good, at his own cost and with the least practicable delay, the ground or portion of any building or other construction opened, broken up or removed for the purpose of executing the said work ;
- (c) pay compensation to any person who sustains damage by the execution of the said work.

(6) If the owner of any land, into, through or under which a drain has been carried under this section whilst such land was unbuilt upon, shall subsequently, at any time desire to erect a building on such land, the Mukhya Nagar Adhikari shall by written notice require the owner or occupier of the premises for the benefit of which such drain was constructed to close, remove or divert the same in such manner as shall be approved by the Mukhya Nagar Adhikari and to fill in, reinstate and make good the land as if the drain had not been carried into, through or under the same :

Provided that no such requisition shall be made, unless, in the opinion of the Mukhya Nagar Adhikari it is necessary or expedient, in order to admit of the construction of the proposed building or the safe enjoyment thereof, that the drain be closed, removed or diverted.

238. Mukhya Nagar Adhikari may enforce drainage of undrained premises situate within hundred feet of Mahapalika drain.—Where any premises are, in the opinion of the Mukhya Nagar Adhikari, without sufficient means of effectual drainage and a Mahapalika drain or some place lawfully set apart for the discharge of drainage is situate at a distance not exceeding one hundred feet from some part of the said premises the Mukhya Nagar Adhikari may, by written notice, require the owner or occupier of the said premises—

- (a) to make a drain of such material, size, description and laid at such level and according to such alignment and emptying into such municipal drain or place aforesaid, as the Mukhya Nagar Adhikari may consider necessary or suitable ;
- (b) to provide and set up and all such appliances and fittings as may appear to the Mukhya Nagar Adhikari necessary for the purposes of gathering and receiving the drainage from and conveying the same off the said premises and of effectually flushing such drain and every fixture connected therewith ;
- (c) to remove any existing drain, or other appliance or thing used or intended to be used for drainage, which in the opinion of the Mukhya Nagar Adhikari is injurious to the health or to provide a closed drain in substitution of an open drain or to provide similarly such other appliances or things as he may consider necessary ;
- (d) to provide and set up all such appliances and fittings as may appear to the Mukhya Nagar Adhikari to be necessary for the purpose of gathering and receiving the waste water from floors and galleries of buildings when they are washed, and conveying the same through spouts or by down-take pipes, so as to prevent such waste water from discharging directly on streets or inside any lower portion of the premises

239. Mukhya Nagar Adhikari may enforce drainage of undrain- ed premises not situate within hundred feet of Mahapalika drain.—Where any premises are, in the opinion of the Mukhya Nagar Adhikari, with- out sufficient means of effectual drainage, but no Mahapalika drain is situated within one hundred feet from some part of the said premises, the Mukhya Nagar Adhikari may, by written notice, require the owner or occupier, of the said premises—

(a) to construct, a drain up to a point to be prescribed in such notice, but not distant more than one hundred feet from some part of the said premises ; or

(b) to construct a closed cesspool of such material, size and description in such position, at such level, and with allowance for such fall as the Mukhya Nagar Adhikari thinks necessary and also construct a drain or drains emptying into such cesspool.

240. Special provisions relating to trade effluent.—Subject to the provisions of this Act, the rules and the bye-laws and any other law in that behalf, the occupier of any trade premises, may, discharge into the Mahapalika drains any trade effluent proceeding from those premises.

241. Power of Mukhya Nagar Adhikari to drain premises in combination.—(1) Where the Mukhya Nagar Adhikari is of the opinion that any group or block of premises, any part of which is situated within one hundred feet of a Mahapalika drain, or other place set apart by the Mahapalika for the discharge of drainage already existing or about to be constructed, may be drained economically or advantageously in combination than separately, the Mukhya Nagar Adhikari may cause such group or block of premises drained by such method as appears to the Mukhya Nagar Adhikari to be best suited therefor, and the expenses incurred by the Mukhya Nagar Adhikari in so doing shall be paid by the owners of such premises in such proportions as the Mukhya Nagar Adhikari thinks fit.

(2) Not less than fifteen days before any work under this section is commenced the Mukhya Nagar Adhikari shall give written notice to the owners of all the premises to be drained, of—

(a) the nature of intended work ;

(b) the estimated expenses thereof ; and

(c) the proportion of such expenses payable by each owner.

(3) The owners for the time being of the several premises constituting a group or block drained under sub-section (1) shall be the joint owners of every drain constructed, erected or fixed, or continued for the special use and benefit only of such premises, and shall in the proportions in which it is determined that the owners of such premises are to contribute to the expenses incurred by the Mukhya Nagar Adhikari under sub-section (1), be responsible for the expenses of maintaining every such drain in good repair and efficient condition :

Provided that every such drain shall from time to time be flushed, cleansed and emptied by the Mukhya Nagar Adhikari at the charge of the Mahapalika Fund.

242. Mukhya Nagar Adhikari may close or limit the use of existing private drains.—(1) Where a drain connecting any premises with a Mahapalika drain or other place lawfully set apart for the discharge drainage, even though such drain is sufficient for the effectual drainage of the said

premises and is otherwise unobjectionable, is not, in the opinion of the Mukhya Nagar Adhikari, adapted to the general drainage system of the City or of the part of the City in which such drain is situated, the Mukhya Nagar Adhikari may—

- (a) subject to the provisions of sub-section (2), close, discontinue, or destroy the said drain and after notice to the owner or occupier of the premises, cause any work necessary for that purpose to be done ;
- (b) direct that such drain shall, from such date as he may specify in this behalf, be used for sullage and sewage only, or for rain-water only or for unpolluted sub-soil water only, or for both rain-water and unpolluted sub-soil water only, and by written notice require the owner or occupier of the premises to make an entirely distinct drain for rain-water or unpolluted sub-soil water or for both rain-water and unpolluted sub-soil water, or for sullage and sewage.

(2) No drain may be closed, discontinued or destroyed by the Mukhya Nagar Adhikari under clause (a) of sub-section (1) except on condition of his providing another drain as effectual for the drainage of the premises and communicating with any Mahapalika drain or other place aforesaid which the Mukhya Nagar Adhikari thinks fit ; and the expense of the construction of any drain so provided by the Mukhya Nagar Adhikari and of any work done under the said clause shall be paid by the Mukhya Nagar Adhikari.

243. Vesting and maintenance of drains for sole use of properties.—Subject to the provisions of sub section (2) of Section 228 every drain which has been constructed, laid, erected or set up, whether at the expense of Mahapalika or not, or which is continued for the sole use and benefit of any premises or group of premises shall—

- (a) notwithstanding anything contained in Section 244 vest in the owner of such premises, or group of premises on and from the appointed day ;
- (b) be provided with all such further appliances and fittings as may appear to the Mukhya Nagar Adhikari necessary for the more effectual working of the same, and also be maintained in good repair and efficient condition by the owner of such premises or group of premises, and be from time to time flushed, cleansed and emptied by the Mukhya Nagar Adhikari at the charge of the Mahapalika Fund.

244. Right of Mahapalika to drains, etc., constructed to charge of Mahapalika Fund on premises not belonging to Mahapalika.—All drains, ventilation-shafts and pipes and all appliances and fitting connected with drainage works constructed, erected or set up at any time at the charge of the Mahapalika Fund or at the charge of the funds of any local authority having jurisdiction in any part of the City before the date of the establishment of the Mahapalika upon any premises not belonging to the Mahapalika and otherwise than for the sole use and benefit of the premises or group of premises shall, unless the Mahapalika has otherwise determined, vest in the Mahapalika.

245. New buildings not to be erected without drains.—(1) It shall not be lawful newly to erect any building or re-erect any building, or to occupy any building newly erected or re-erected unless and until—

- (a) a drain be constructed of such size, material and description, at such level and with such fall as shall appear to the Mukhya Nagar Adhikari to be necessary for the effectual drainage of such building ;
- (b) there have been provided for and set up in such building and in the premises appurtenant thereto, all such appliances and fittings as may appear to the Mukhya Nagar Adhikari to be necessary for the purposes of gathering and receiving the drainage from, and conveying the same off, the said building and the said premises, and of effectually flushing the drain of the said building and every fixture connected therewith.

(2) The drain to be constructed as aforesaid shall empty into a Mahapalika drain or into some place lawfully set apart for the discharge of drainage situated at a distance not exceeding one hundred feet from the premises in which such building is situated ; but if no such drain or place is within that distance then such drain shall empty into such cesspool as the Mukhya Nagar Adhikari may direct.

246. Obligation of owners of drains to allow use or joint ownership to others.—Every owner of the drain connected with a Mahapalika drain or other place lawfully set apart for the discharge of drainage shall be bound to allow the use of it to others or to admit other persons as joint owners thereof, on such terms as may be prescribed under Section 247.

247. How right of use or joint ownership of a drain may be obtained by a person other than the owner. (1) Any person desiring to drain his premises into a Mahapalika drain through a drain of which he is not an owner, may make a private arrangement with the owner for permitting his use of the drain, or may apply to the Mukhya Nagar Adhikari for authority to use such drain or to be declared joint owner thereof.

(2) Where the Mukhya Nagar Adhikari is of opinion, whether on receipt of such application or otherwise, that the only, or the most convenient, means by which the owner or occupier of any premises can cause the drain of such premises to empty into a Mahapalika drain or other place legally set apart for the discharge of drainage is through a drain communicating with such Mahapalika drain or place aforesaid but belonging to some person other than the said owner or occupier, the Mukhya Nagar Adhikari, after giving the owner of the drain a reasonable opportunity of stating any objection thereto, may, if no objection is raised or if an objection is raised the same is disallowed by an order in writing, either authorize the said owner or occupier to use the drain or declare him to be a joint owner thereof, on such conditions as to the payment of rent or compensation and as to connecting the drain of the said premises with the communication drain and as to the respective responsibilities of the parties for maintaining, repairing, flushing, cleansing and emptying the joint drain, or otherwise as may appear to him be equitable.

(3) Every such order bearing the signature of the Mukhya Nagar Adhikari shall be a complete authority to the person in whose favour it is made, or to any agent or person employed by him for this purpose, after giving or tendering to the owner of the drain the compensation or rent specified in the said order and otherwise fulfilling, as far as possible, the conditions of the said order and after giving to the owner of the drain reasonable written notice of his intention so to do, to enter upon the land in which the drain is situate with assistants and workmen, at any time between sunrise and sunset,

and, subject to all provisions of this Act, to do all such things as may be necessary for—

- (a) connecting the two drains ; or
- (b) renewing, repairing or altering the connections ; or
- (c) discharging any responsibility attaching to the persons in whose favour the Mukhya Nagar Adhikari's order is made for maintaining, repairing, flushing, cleansing or emptying the joint drain or any part thereof.

(4) In respect of the execution of any work under sub-section (3) the person in whose favour the Mukhya Nagar Adhikari's order is made shall be subject to the same restrictions and liabilities which are specified in sub-section (4) of Section 237.

248. Sewage and rain-water drains to be distinct.—Whenever it is provided in this Chapter that steps shall or may be taken for the effectual drainage of any premises, the Mukhya Nagar Adhikari may require that there shall be one drain for sullage, excrementitious matter and polluted water and another and an entirely distinct drain for rain-water and unpolluted sub-soil water, or for both rain-water and unpolluted sub-soil water each emptying into separate Mahapalika drains or other places lawfully set apart for the discharge of drainage or other suitable places.

249. Affixing of pipes for ventilation of drains, etc.—(1) For the purpose of ventilating any drain or cesspools whether belonging to the Mahapalika or to any other person, the Mukhya Nagar Adhikari may erect upon any premises or affix to the outside any building or to any tree any such shaft or pipe as shall appear to the Mukhya Nagar Adhikari necessary and cut through any projection from any building including the eaves of any roof thereof in order to carry up such shaft or pipe through any such projection and lay in, through, or under any land such appliances as may in the opinion of the Mukhya Nagar Adhikari be necessary for connecting such ventilating shaft or pipe with the drain or cesspool intended to be ventilated.

(2) Such shaft or pipe shall be erected or affixed or removed in such a manner as may be prescribed.

(3) If the Mukhya Nagar Adhikari declines to remove a shaft or pipe when so required by the owner of the premises, building or tree, upon or to which the same has been erected or affixed in accordance with the rules made in this behalf, the owner may within fifteen days of the receipt by him of the reply of the Mukhya Nagar Adhikari apply to the Judge for an order that the same be removed.

(4) In the hearing and the disposal of the application under sub-section (3), the Judge shall follow such procedure as may be prescribed, and the order passed by the Judge shall be final and binding upon the parties.

(5) Where the owner of any building or land cut through, opened or otherwise dealt with under sub-section (1) is not the owner of the drain or cesspool intended to be ventilated, the Mukhya Nagar Adhikari shall, so far as practicable, reinstate and make good such building, and fill in and make good such land, at the charge of the Mahapalika Fund.

Disposal of Sewage

250. Appointment of places for emptying of drains and disposal of sewage.—The Mukhya Nagar Adhikari may cause all or any Mahapalika

drains to empty into any place, whether within or without the City, and dispose of the sewage at any place whether within or without the City, and in any manner which he shall deem suitable for such purpose :

Provided that—

- (a) the Mukhya Nagar Adhikari shall not cause any Mahapalika drain to empty into any place into which a Mahapalika drain has not heretofore emptied, or dispose of sewage of any place or in any manner at or in which sewage has not heretofore been disposed of, without the sanction of the Mahapalika ;
- (b) no Mahapalika drain shall be made to empty into any place, and no sewage shall be disposed of at any place or in any manner which the State Government shall think fit to disallow.

251. Provision of means for disposal of sewage.—The Mukhya Nagar Adhikari may, for the purpose of receiving, treating, storing, disinfecting, distributing or otherwise disposing of sewage, construct any work within or without the City or purchase or take on lease any land, building, engine, material or apparatus either within or without the City or enter into any arrangement with any person for any period not exceeding twenty years for the removal or disposal of sewage within or without the City.

Water-closets, Privies, Urinals, etc.

252. Construction of water-closets and privies —(1) It shall not be lawful to construct any water-closet or privy for any premises except with the written permission of the Mukhya Nagar Adhikari and in accordance with such terms not being inconsistent with any rule or bye-law for the time being in force, as he may prescribe.

(2) In prescribing any such terms the Mukhya Nagar Adhikari may determine in each case—

- (a) whether the premises shall be served by the water-closet or by the privy system, or partly by one and partly by the other ; and
- (b) what shall be the site or position of each water-closet or privy.

(3) If any water-closet or privy is constructed on any premises in contravention of sub-section (1), the Mukhya Nagar Adhikari, may, after giving not less than ten day's notice to the owner or occupier of such premises, close such water-closet or privy and alter or demolish the same, and the expenses incurred by the Mukhya Nagar Adhikari, in so doing shall be paid by such owner or occupier or by the person offending.

253. Water-closets and other accommodation in buildings newly erected or re-erected.—(1) It shall not be lawful to erect or to re-erect or convert within the meaning of Section 315 any building for, or intended for, human habitation at or in which labourers or workmen are to be employed, without such water-closet or privy accommodation and such urinal accommodation and accommodation for bathing or for the washing of clothes and domestic utensils of such building as the Mukhya Nagar Adhikari may prescribe.

(2) In prescribing any such accommodation the Mukhya Nagar Adhikari may determine in each case—

- (a) whether such building or work shall be served by the water-closet or by the privy system, or partly by one and partly by the other ;

(b) what shall be the site or position of each water-closet, privy, urinal or bathing or washing place and their number.

(3) In determining the accommodation to be required under sub-section (2) the Mukhya Nagar Adhikari shall have regard to the necessity of providing adequate and suitable water-closet or privies and bathing places or domestic servants employed by the occupants of the building.

254. Public necessities.—The Mukhya Nagar Adhikari shall provide and maintain in proper and convenient situations water-closet, latrines, privies and urinals, and other similar conveniences for public accommodation.

Inspection

255. Drains, etc., not belonging to Mahapalika, to be subject to inspection and examination.—(1) All drains, ventilation shafts and pipes, cesspools, housegullies, water-closets, privies, latrines and urinals and bathing and washing places which do not belong to the Mahapalika or which have been constructed, erected or set up at the charge of the Mahapalika Fund on premises not belonging to the Mahapalika, for the use or benefit of the owner or occupier of the said premises, shall be open to inspection and examination by the Mukhya Nagar Adhikari.

(2) The Mukhya Nagar Adhikari may, in the course of an inspection or examination under sub-section (1) obtain and take away a sample of any trade effluent which is passing from the premises inspected or examined into a Mahapalika drain. The analysis of such sample shall be made in the manner prescribed.

(3) The results of any analysis of the sample taken under sub-section (2) shall be admissible as evidence in any legal proceedings under this Act.

256. Power to open ground, etc., for purposes of inspection or examination.—For the purpose of such inspection or examination the Mukhya Nagar Adhikari may cause the ground or any portion of any drain or other work exterior to a building, which he shall think fit, to be opened, broken up or removed :

Provided that in the prosecution of any such inspection and examination as little damage as possible shall be done.

257. Mukhya Nagar Adhikari may require repairs, etc., to be made—When as a result of any inspection or examination under Section 255 the Mukhya Nagar Adhikari finds that any drain, ventilation-shaft or pipe, cesspool, house-gully, water-closet, privy, latrine, urinal or bathing or washing place is not in good order or condition or, except when the same has been erected by or under the order of the Mukhya Nagar Adhikari, if it has been constructed in contravention of any of the provisions of this Act or the rules or bye-laws or of any enactment for the time being in force, the Mukhya Nagar Adhikari may require the owner by written notice to remove the defect in such manner as he may, subject to any rules or bye-laws in force, direct.

General Provisions

258. Prohibition of acts contravening the provisions of the Act, rule or bye-laws or done without sanction.—(1) No person shall—

(a) in contravention of any of the provisions of this Act or rules or bye-laws or of any notice issued or direction given under this

Act or without the written permission of the Mukhya Nagar Adhikari, in any way alter the fixing, disposition or position of, or construct, erect, set up, renew, rebuild, remove, obstruct, stop up, destroy, or change any drain, ventilation-shaft or pipe, cesspool, water-closet, privy, latrine or urinal or bathing or washing place or any trap, covering or other fitting or appliance connected therewith ;

- (b) without the written permission of the Mukhya Nagar Adhikari, renew, re-build or unstop any drain, ventilation-shaft or pipe, cesspool, water-closet, privy, latrine or bathing or washing place or any fitting or appliance, which has been ordered to be discontinued, demolished or stopped up under any of the provisions of this Act or the rules or bye-laws ;
- (c) without the written permission of the Mukhya Nagar Adhikari, make any projection over or encroachment upon or in any way injure or cause or permit to be injured, any drain, cesspool, house-gully, water-closet, privy, latrine or urinal or bathing or washing place :

Provided that nothing in this clause shall apply to any weather-shade in width not exceeding three feet over any window which does not front a wall or window of any adjoining house ;

- (d) drop, pass or place, or cause or permit to be dropped, passed or placed, into or in any drain any brick, stone, earth, ashes, dung or any substance or matter which is likely to injure the drain or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents ;
- (e) pass or permit or cause to be passed, into any drain provided for a particular purpose any matter or liquid for the conveyance of which such drain has not been provided ;
- (f) except as provided by or under this Act cause or suffer to be discharged into any drain any chemical refuse or waste steam or any liquid of temperature higher than one hundred and twenty degrees Fahrenheit, being refuse or steam which when so treated is, either along or in combination with the contents of the drain, dangerous or the cause of a nuisance or prejudicial to health ;
- (g) cause or suffer to be discharged into any drain, carbide of calcium or any such crude petroleum, any such oil made from petroleum, coal, shale or bituminous substances, or such product of petroleum or mixture containing petroleum as gives off under test an inflammable vapour at a temperature of less than seventy-three degrees Fahrenheit.

(2) If the person carrying out any work or doing any act in contravention of the clauses or sub-section (1) is not at the time of notice the owner of such building or work then the owner of such building or work shall be deemed to have been responsible for carrying out all such requisitions in the same way as the person so carrying out would have been liable.

259. Water-closets not to be injured or improperly fouled.—(1)
No person shall injure or foul any water-closet, privy, urinal or bathing or washing place or any fittings or appliances in connection therewith which

have been provided for the use in common of the inhabitants of one or more buildings.

(2) If any such water-closet, privy, urinal or bathing or washing place or any fitting or appliance in connection therewith or the approaches thereto or the walls, floors, or seats or anything used in connection therewith are in such a state as to be nuisance or source of annoyance to any inhabitants of the locality or passer by for want of proper cleansing thereof, such of the persons having the use thereof as may be in default or in the absence of evidence as to which of the persons having the use thereof in common is in default, every such person shall be deemed to have contravened the provisions of this section.

(3) The provisions of this section shall not exempt the owner of the building or buildings from any penalty to which he may otherwise have rendered himself liable.

260. State Government may extend provisions of Chapter outside limits of City.—The State Government may, by order which shall be published in the official *Gazette*, apply to any area to be specified in the order but not lying beyond a distance of two miles from the limits of the City, the provisions of any section in this Chapter and of rules made thereunder, subject to such adaptations whether by way of modification, addition or omission, as it may deem to be necessary and expedient and thereupon the provision and rules so applied shall have effect in that area as if it were within the City.

261. Appeals.—Any person aggrieved by—

- (a) a declaration under sub-section (1) of Section 229, or
- (b) notice under sub-section (1) of Section 230 to connect the drain or sewer, or
- (c) the requisition of the Mukhya Nagar Adhikari under sub-section (1) of Section 235 to construct a drain in a different manner, or
- (d) a notice of the Mukhya Nagar Adhikari under Section 236 of his intention to close, demolish, alter or remake any connection, or
- (e) an order of the Mukhya Nagar Adhikari under sub-section (1) of Section 237 authorizing as owner or occupier to carry his drain into, through or under the land of another person, or
- (f) a notice of the Mukhya Nagar Adhikari under sub-section (6) of Section 237 requiring the owner or occupier of any premises to close, remove or divert the drain in a particular manner, or
- (g) a notice of the Mukhya Nagar Adhikari under Section 239, or
- (h) a notice under clause (a) or a direction or notice under clause (b) of sub-section (1) of Section 242 issued by the Mukhya Nagar Adhikari, or
- (i) a notice under sub-section (3) of Section 252 of the Mukhya Nagar Adhikari's intention to close any water-closet or privy or to alter or demolish it, or
- (j) a notice under Section 257 requiring the owner to remove defects in any washing place,

may, within the prescribed time and in the prescribed manner, appeal to the Judge.

262. Power to make rules.—(1) The State Government may make rules for the purposes of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers such rules may provide for—

- (a) filing and disposal of objections to any notice under sub section (3) of Section 229 ;
- (b) the conditions and restrictions to be observed with reference to drains ;
- (c) the construction, maintenance, improvement, alteration and discontinuance of drains ;
- (d) the conditions for connections with municipal drains ;
- (e) the conditions on which occupiers of trade premises may discharge any trade effluent into Mahapalika drains ;
- (f) the manner in which samples of trade effluent shall be analysed ;
- (g) the conditions to be observed in erecting or affixing ventilation-shafts or pipes under Section 249 ;
- (h) the construction, position and maintenance of water-closets, privies, urinals, bathing places or washing places ;
- (i) the manner in which the Mukhya Nagar Adhikari shall exercise his powers under Sections 255 and 256 ;
- (j) payment of expenses of inspection and examination under Sections 255 and 256 ;
- (k) the manner of filing and disposal of appeals filed under Section 261 and the period within which appeals may be filed.

CHAPTER XI

Water-Supply

Construction and Maintenance of Mahapalika Waterworks

263. Power of the Mahapalika to construct, run or close water-works.—For the purposes of providing the City with a supply of water, proper and sufficient, for public and private purposes, the Mukhya Nagar Adhikari may, subject to the provisions of this Act, construct, maintain, repair, alter, improve, and extend water-works either within or without the City or close any such works and substitute other such works and for the purposes aforesaid do all such acts as may be incidental or necessary, including in particular—

- (i) the carrying of such works, through, across, over or under any street or place, and after reasonable notice in writing to the owner or occupier, into, through, over or under any building or land ;
- (ii) purchasing or taking on lease any water-works or right to store or to take or convey water either within or without the limits of the Mahapalika.

264. Inspection of water-works.—(1) The State Government may appoint any person for the purposes of inspecting any water-works referred to in Section 263 or any water connection and such person shall have liberty to enter upon and inspect any such water-works, or water connection.

(2) The Mukhya Nagar Adhikari and any person appointed under sub-section (1) may, for the purpose of inspecting, repairing or executing any work in, upon or in connection with any water-works, or water connection at all reasonable times—

(a) enter upon and pass through any land within or without the City, adjacent to or in the vicinity of such water-works, or water connection in whomsoever such land may vest ;

(b) cause to be conveyed into and through any such land all necessary men, materials, tools and implements.

(3) In the exercise of any power conferred by this section, as little damage as can be, shall be done, and compensation for any damage which may be done in the exercise of any of the said powers shall be paid from the funds of the Mahapalika.

(4) Where any person has been appointed by the State Government for the purposes of inspection under sub-section (1) he shall, as soon as may be, submit his report to the Mukhya Nagar Adhikari who shall without delay lay it before the Executive Committee which shall then forward it to the State Government with its comments.

(5) The State Government shall upon receipt of the report with the comments, if any, of the Executive Committee, consider it and communicate its decisions to the Mahapalika and the Mahapalika shall be bound to implement the decision of the State Government, subject to funds being available for the purpose.

265. Fire-hydrants to be provided by the Mahapalika.—The Mukhya Nagar Adhikari shall provide, maintain and repair fire-hydrants and all incidental works for the supplying of water in case of fire at all such places as shall be deemed to be necessary.

266. Power of carrying water-mains, etc.—(1) For the purpose of carrying, renewing and repairing water-mains, pipes and ducts within or without the City, Mukhya Nagar Adhikari shall have the same powers and be subject to the same restrictions as he has, and is subject to, under the provisions hereinbefore contained for carrying, renewing and repairing drains within the City.

(2) This section shall apply in respect of carrying, renewing, and repairing private water-mains, pipes and ducts as it applies in respect of carrying, renewing and repairing, municipal water-mains, pipes and ducts.

267. Prohibition of certain acts affecting the Mahapalika water-works.—(1) Except with the prior written sanction of the Mukhya Nagar Adhikari, no person shall erect or re-erect any building, wall or structure of any kind or construct any street or minor railway over any Mahapalika water-mains.

(2) Except with the permission of the Mahapalika, no person shall—

(a) erect any building for any purpose whatsoever on any part of such area as shall be demarcated by the Mukhya Nagar Adhikari

near any lake, tank well, reservoir or river from which a supply of water is derived for a Mahapalika water-works ;

- (b) remove, alter, injure, damage or in any way interfere with the demarcation works of the area aforesaid ;
 - (c) extend, alter or apply to any purpose different to that to which the same has been heretofore applied, any building already existing within the area aforesaid ; or
 - (d) carry on, within the area aforesaid, any operation of manufacture, trade or agriculture in any manner or do any act whatsoever, whereby injury may arise to any such lake, tank, well, reservoir or river or to any portion thereof or whereby the water of any such lake, tank, well, reservoir or river may be fouled or rendered less wholesome.
- (3) Except as hereinafter provided, no person shall—
- (a) cause or suffer to percolate or drain into or upon any Mahapalika water-works or to be brought thereinto or thereupon anything or to be done any act, whereby the water therein may in any way be fouled or polluted or its quality altered ;
 - (b) alter the surface of any Mahapalika land adjacent to or forming part of any such work by digging thereinto or depositing thereon any substance ;
 - (c) cause or suffer to enter into the water in such work any animal ;
 - (d) throw or put anything into or upon the water in such work ;
 - (e) bath in or near such work ; or
 - (f) wash or cause to be washed in or near such work any animal or thing.

268. Remedy against acts in contravention of Section 267 and removal of latrines, etc., near any source of water-supply.—(1) For any building, wall or structure erected or re-erected in contravention of the provisions of sub-section (1) of Section 267 or any building erected in contravention of clause (a) of sub-section (2) of Section 267, the Mukhya Nagar Adhikari may, with the approval of the Executive Committee, cause the same to be removed or otherwise dealt with as shall appear fit to him and the expenses thereby incurred shall be paid by the person offending.

(2) If any person persists in acting in contravention of the provisions of clauses (b), (c) and (d) of sub-section (2) of Section 267, the Mukhya Nagar Adhikari may, with the approval of the Executive Committee, take measures including the use of such minimum force, as may be necessary, to stop further contravention of the provisions of the aforesaid clauses.

(3) The Mukhya Nagar Adhikari may by notice require the owner or occupier on whose land a drain, privy, latrine, urinal, cesspool or other receptacle for filth or refuse exists within fifty feet of a spring, well, tank, reservoir, river or other source from which water is, or may be, derived for public use, to remove or close the same within one week from the service of such notice and if such owner or occupier fails to comply with the demand within the time allowed, the Mukhya Nagar Adhikari, may cause the same to be removed or closed and the expenses thereby incurred shall be paid by the person offending.

269. Obligations of Mahapalika imposing water-tax.—Where water-tax is levied on any building or land it shall be incumbent on the Mukhya Nagar Adhikari to make provision for supply of water to owners and occupiers of such buildings or land in such manner, during, such time and in such quantity as may be prescribed by rules :

Provided that the Mahapalika shall not be liable to any forfeiture, penalty or damages for failure to supply water if the same arises from accident or from unusual drought or other unavoidable causes.

Comments

Analogous law—Section 228 of the U. P. Municipalities Act.

Disconnection of water—It is a continuing cause of action, vide *Municipal Board Allahabad v. Sarkar Bahadur*.¹

Scope—1971 A.W.R. 827.

270. Prohibition of fraudulent and unauthorised use of water.—

(1) No person shall fraudulently dispose of any water supplied to him by the Mahapalika.

(2) No person to whom a private supply of water is furnished by the Mahapalika shall, except when the water-supply is charged for by measurement, permit any person who does not reside on premises in respect of which water-tax is paid to carry away water from the premises to which it is supplied.

(3) No person who does not reside on premises in respect of which water-tax is paid shall carry away water from any premises to which the private supply is furnished by the Mahapalika, unless in any case in which supply is charged for by measurement, he does so with the permission of the person to whom the said supply is furnished.

271. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers such rules may provide for—

- (a) the maintenance, cleansing, efficient running and closure of a private water course, *etc.*, within the limits of the Mahapalika ;
- (b) the provision for suitable measures for the inspection, disinfecting of any well, tank or other places from which water is likely to be taken for the purpose of drinking and for such steps as may be deemed necessary to prevent removal of water from the same ;
- (c) the supply of water by agreement to any owner or occupier of a land or building within the limits of the Mahapalika with conditions and rates therefor ;
- (d) purposes for the supply of water ;
- (e) precedence in the matter of supply of water for domestic purpose over all other purposes ;
- (f) the installation of water meters and connection pipes ;
- (g) the size and nature of the meters, pipes, stand-pipes, or pumps and hydrants, the manner in which they will be laid, constructed, controlled and maintained, with a view to maintain an efficient supply of water ;

1. A. I. R. 1929 Alld. 870 (D. B.).

- (h) the mains or pipes in which fire plugs are to be fixed and the places at which keys of the fire plugs are to be deposited ;
- (i) the periodical analysis by a qualified analyst of the water-supply by the Mahapalika ;
- (j) the conservation and prevention of injury or contamination to sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the Mahapalika ;
- (k) the manner in which connections with waterworks may be constructed or maintained and the agency which shall or may be employed for such construction or maintenance ;
- (l) the regulation of all matters for the supply of water including the turning on and turning off and preventing the waste of water ; and
- (m) the supply of water outside the limit of the Mahapalika and the collection of water-taxes and of charges relating to such supply and the prevention of evasion of the taxes.

CHAPTER XII

Streets

Construction, Maintenance and Improvement of Streets

272. Vesting of public streets in Mahapalika—(1) Subject to any special reservation made by the State Government from time to time all streets within the City being, or which at any time become, public streets, except streets which on the appointed day vested in the State Government or the Central Government or after the said day may be constructed and maintained by an authority other than the Mahapalika, with the soil, sub-soil and the side drains, footways, pavements, stones and other materials thereof, shall vest in the Mahapalika and be under the control of the Mukhya Nagar Adhikari.

(2) The State Government may after consulting the Mahapalika by notification withdraw any such street with the soil, sub-soil, and the side drains, footways, pavements, stones and other materials thereof from the control of the Mahapalika.

273. Power of Mukhya Nagar Adhikari in respect of public streets—(1) The Mukhya Nagar Adhikari shall from time to time cause all public streets vested in the Mahapalika to be levelled, metalled or paved, channelled, altered and repaired, as occasion shall require, and may also from time to time widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered and may place and keep in repair fences and posts for the safety of pedestrians :

Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees or such higher amount as the Mahapalika may, from time to time fix, shall be undertaken by the Mukhya Nagar Adhikari unless or until such undertaking has been authorised by the Mahapalika.

(2) With the sanction of the Mahapalika given in accordance with the rules and bye-laws in force in that behalf, the Mukhya Nagar Adhikari may turn, divert, discontinue the public use of, or permanently close the whole or any part of a public street vested in the Mahapalika and upon such closure may, subject to the previous sanction of the State Government and the

Mahapalika dispose of the site of such street, or of the portion thereof which has been closed, as land vesting in the Mahapailka.

Comments

Scope—Under Sub-Section (2) of Section 273, U. P. Nagar Mahapalika Adhiniyam, 1958 the Mukhya Nagar Adhikari can turn, divert discontinue the public use of, or permanently close the whole or any part of a public street vested in the Mahapalika. Thus, the Mahapalika has the statutory power to improve a public street. It can turn, divert and discontinue the public use of the whole or any part of a public street. It can also permanently close the whole or any part of public street.

Where the respondents Nagar Mahapalika were laying out a part with a view to improve the street and the surroundings it was held that the Mahapalika had the statutory authority to improve a public street. They have an unconditional power to discontinue the public use of any part of a public street. So, even if the act of fencing any laying out a park whold have the effect of closing that park, the action is within the authority possessed by the Mahapalika. The petitioner's common-law private right cannot prevail over this statutory right, vide *S. D. Bhatia and others v. M. Butt*, Administrator, Nagar Mahapalika, Allahabad¹.

Order of demolition—When can be made—Section 10 U. P. Regulation of Buildings Operations Act, 1958—It is evident that an order of demolition can be made in respect of any erection, re-erection or material change that has been commenced, or is carried on or has been completed, in contravention of any directions issued under this Act or without the permission contemplated by Section 6. A permission under Section 6 could not possibly be obtained by any one before the coming into force of the Act in any particular Regulated Area. No order of demolition can, therefore, be passed in relation to any erection, re-erection or material change in building that any have been completed prior to the Act coming into operation in that area, vide *S. D. Bhatia v. M. Butt*, Administrator, Nagar Mahapalika, Allahabad¹.

274. Power to make new public streets.—The Mukhya Nagar Adhikari, when authorized by the Mahapalika in this behalf, may at any time—

- (a) lay out and make a new public street ;
- (b) agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such persons and partly at the expense of the Mahapalika, and may further agree that such street shall, on completion, become a public street and vest in the Mahapalika ;
- (c) construct tunnels, bridges, causeways and other works subsidiary to the layout and making of a new public street ;
- (d) divert or turn an existing public street vested in the Mahapalika or a portion thereof.

275. Minimum width of new public street.—(1) The Mahapalika shall from time to time specify the minimum width for different classes of

public streets according to the nature of the traffic likely to be carried thereon, the localities in which they are situated, the heights up to which buildings abutting thereon may be erected and other similar considerations.

(2) The width of a new public street made under Section 274 shall not be less than that prescribed under sub-section (1) for the class to which it belongs, and no steps and, except with the written permission of the Mukhya Nagar Adhikari under Section 293 no other projections shall project over or extend into any such street.

(3) The Mukhya Nagar Adhikari may, with the approval of the Executive Committee, by written notice require the owner or occupier of any premises to remove or to take such order as he may direct with any projection existing within the minimum width of any street specified under sub-section (1) :

Provided that if in any such case the projection was lawfully erected or set up, compensation shall be paid by the Mukhya Nagar Adhikari to every person who sustains loss or damage by the removal or alteration thereof.

276. Power to adopt, construct or alter any subway, bridge, etc.—The Mukhya Nagar Adhikari when authorized by the Mahapalika in this behalf, may agree with any person—

- (a) to adopt and maintain any existing or projected subway, bridge, viaduct or arch, and the approaches, thereto, and may accordingly adopt and maintain such subway, bridge, viaduct or arch and approaches as parts of public streets, or as property vested in the Mahapalika, or
- (b) for the construction or alteration of any such subway, bridge, viaduct or arch or for the purchase or acquisition of any adjoining land required for the foundations and support thereof or for the approaches thereto, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the Mahapalika.

277. Power to prohibit use of public streets for certain kinds of traffic.—(1) It shall be lawful for the Mukhya Nagar Adhikari with the sanction of the Mahapalika to—

- (a) prohibit vehicular traffic in any particular public street vesting in the Mahapalika so as to prevent danger, obstruction or inconvenience to the public by fixing up posts at both ends of such street or portion of such street ;
- (b) prohibit in respect of all public streets, or particular public streets, the transit of any vehicle of such form, construction, weight, or size or laden with such heavy or unwieldy objects as may be deemed likely to cause injury to the roadways or any construction thereon, or risk or obstruction to other vehicles or to pedestrians along or over such street or streets, except under such conditions as to time, mode of traction or locomotion, use of appliances for protection of the roadways, number of lights and assistants and other general precautions and the payment of special charges as may be specified by the Mukhya Nagar Adhikari generally or specially in each case.

(2) Notices of such prohibitions as are imposed under sub-section (1) shall be posted up in conspicuous places at or near both ends of the public streets or portions thereof to which they relate, unless such prohibitions apply generally to all public streets.

278. Power to acquire premises for improvement of public streets.—(1) The Mukhya Nagar Adhikari may, subject to the provisions of this Act and the rules—

- (a) acquire any land required for the purpose of opening, widening, extending, diverting or otherwise improving any public street, bridge or sub-way or of making any new public street, bridge or sub-way and the buildings, if any, standing upon such land ;
- (b) acquire in addition to the said land and the buildings, if any, standing thereon, all such land with the buildings, if any standing thereon, as it shall seem expedient in the public interest to acquire outside of the regular line, or of the intended regular line, or such streets ;
- (c) lease, sell or otherwise dispose of any land or building acquired under clause (b).

(2) The acquisition of land for providing, extending or improving a place for the parking of vehicles shall be deemed to be acquisition of land for the purpose of providing, extending or improving a public street.

(3) Any conveyance of land or of a building under clause (c) of sub-section (1) may comprise such conditions as the Mukhya Nagar Adhikari thinks fit, as to the removal of the existing building, the description of new building to be erected, the period within which such new building shall be completed and other such matters.

279. Power to prescribe street lines.—(1) The Mukhya Nagar Adhikari may prescribe a line on one or both sides of any public street :

Provided that every regular line of a public street operative under any law for the time being in force in any part of the City on the day immediately preceding the appointed day shall be deemed to be a line prescribed under this Act until a fresh line as prescribed by the Mukhya Nagar Adhikari under this section :

Provided further that whenever it is proposed to prescribe a fresh line in substitution for any existing line or for any part thereof, previous approval of the Executive Committee shall be had.

(2) The line for the time being prescribed shall be called the regular line of the street.

(3) A register with plans attached shall be kept by the Mukhya Nagar Adhikari showing all public streets in respect of which a regular line of the street has been prescribed and such register shall contain such particulars as to the Mukhya Nagar Adhikari may appear to be necessary and shall be open to inspection by any person upon payment of such fee as may from time to time be prescribed by the Executive Committee.

(4) (a) Subject to the provisions of sub-section (5) no person shall construct or reconstruct any portion of any building on and within the regular line of the street except with the written permission of the Mukhya Nagar Adhikari and in accordance with the conditions imposed therein and the

Mukhya Nagar Adhikari shall in every case in which he gives such permission, at the same time, report his reasons in writing to the Executive Committee.

(b) No person shall construct or reconstruct any boundary wall or a portion of a boundary wall within the regular line of the street except with the written permission of the Mukhya Nagar Adhikari :

Provided that if, within sixty days after the receipt of an application from any person for permission to construct or reconstruct a boundary wall or a portion thereof, the Mukhya Nagar Adhikari fails to acquire the land within the regular line of the street under Section 282, the person may, subject to any other provisions of this Act or the rules or bye-laws, proceed with the work of construction or reconstruction of such boundary wall or a portion thereof, as the case may be.

(5) (a) When the Mukhya Nagar Adhikari grants permission under clause (a) of sub-section (4) for the construction or reconstruction of any building on land within the regular line of the street he may require the owner of the building to execute an agreement binding himself and his successors-in-title not to claim compensation in the event of the Mukhya Nagar Adhikari at any time thereafter calling upon him or any of his successors by written notice to remove any work carried out in pursuance of such permission or any portion thereof and to pay the expenses of such removal if, in default, such removal is carried out by the Mukhya Nagar Adhikari.

(b) The Mukhya Nagar Adhikari may before granting such permission require the owner to deposit in the Mahapalika office an amount sufficient in his opinion to cover the cost of removal and such compensation, if any, as may be payable to any successor-in-title or transferee of such building.

280. Setting back buildings to the regular line of the street.—(1) If any building or any part of a building abutting on a public street is within the regular line of the street, the Mukhya Nagar Adhikari may, whenever it is proposed—

(a) to rebuild such building or to take down such building to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet ; or

(b) to remove, reconstruct or make any addition to or structural alteration in any portion of such building which is within the regular line of the street,

require such building to be set back to the regular line of the street.

(2) When any building or any part thereof within the regular line of the street falls down or is burnt down or is taken down whether under the provisions of this Act or otherwise, the Mukhya Nagar Adhikari may at once take possession on behalf of the Mahapalika of the portion of land within the regular line of the street, theretofore occupied by the said building and, if necessary, clear the same.

(3) Land acquired under this section shall thenceforward be deemed a part of the public street and shall vest, as such, in the Mahapalika.

281. Additional power of Mukhya Nagar Adhikari to order setting back of buildings to regular line of street.—(1) Where any building or any part thereof is within the regular line of a public street and if, in the

opinion of the Mukhya Nagar Adhikari, it is necessary to set back the building to the regular line of the street he may, if the provisions of Section 280 do not apply, by written notice require the owner of such building to show cause within a period to be specified, why such building or any part thereof which is within the regular line of the street be not pulled down and the land within the said line acquired by the Mukhya Nagar Adhikari.

(2) If in pursuance of the notice under sub-section (1) the owner fails to show sufficient cause to the satisfaction of the Mukhya Nagar Adhikari, the Mukhya Nagar Adhikari may, with the approval of the Executive Committee, require the owner by a written notice to pull down the building or the part thereof which is within the regular line of the street within a period to be specified in the notice.

(3) If within the period specified in the notice under sub-section (2) the owner of such building fails to pull down the building or any part thereof coming within the said line, the Mukhya Nagar Adhikari may pull down the same and recover all the expenses incurred in so doing from the owner.

(4) The Mukhya Nagar Adhikari shall also take possession on behalf of the Mahapalika of the portion of the land within the said line theretofore occupied by the said building, and such land shall thenceforward be deemed a part of the public street and shall vest, as such, in the Mahapalika.

(5) Nothing in this section shall be deemed to apply to buildings vesting in the State.

282. Acquisition of open land or of land occupied by platforms, etc., within regular line of street.—If any land not vesting in the Mahapalika whether open or closed, lies within the regular line of a public street and is not occupied, by a building, or if a platform, verandah, step, compound wall, hedge or fence or some other structure external to a building, abutting on a public street or a portion of a platform, verandah, step, compound wall, hedge, or fence or other such structure, is within the regular line of such street, the Mukhya Nagar Adhikari may, after giving to the owner of the land or building not less than fourteen clear days, written notice of his intention to do so, and after hearing any objection which may be filed during this time take possession on behalf of the Mahapalika of the said land within its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid or of the portion of the said platform, verandah, step or other such structure as aforesaid which is within the regular line of the street and, if necessary, clear the same and the land so acquired, shall thenceforward be deemed a part of the public street :

Provided that when the land or building is vested in the State Government or the Central Government, possession shall not be taken as aforesaid, without the previous sanction of the Government concerned and, when the land or building is vested in any Mahapalika constituted by any law for the time being in force, possession shall not be taken as aforesaid, without the previous sanction of the State Government.

283. Acquisition of the remaining parts of building and land after their portions within a regular line of the street are acquired.—(1) If a building or land is partly within the regular line of a public street and if the Mukhya Nagar Adhikari is satisfied that the land remaining after the exclusion of the portion within the said line will not be suitable or fit for

any beneficial use, he may, at the request of the owner, acquire such land in addition to the land within the said line and such surplus land shall be deemed to be a part of the public street vesting in the Mahapalika.

(2) Such surplus land may thereafter be utilized for the purpose of setting forward of buildings under Section 284.

284. Setting forward of buildings to the line of the street.—(1) If any building which abuts on a public street is in rear of the regular line of such street, the Mukhya Nagar Adhikari may, whenever it is proposed—

(a) to rebuild such building, or

(b) to alter or repair such building in any manner that will involve the removal or re-erection of such building, or of the portion thereof which abuts on the said street to an extent exceeding one-half of such building or portion thereof above the ground level, such half to be measured in cubic feet.

in any order which he issues concerning the rebuilding, alteration or repair of such building, permit or with the approval of the Executive Committee, require such building to be set forward to the regular line of the street.

(2) For the purpose of this section, a wall separating any premises from a public street shall be deemed to be a building; and it shall be deemed to be a sufficient compliance with a permission or requisition to set forward a building to the regular line of a street if a wall of such materials and dimensions as are approved by the Mukhya Nagar Adhikari, is erected along the said line.

285. Compensation to be paid and betterment charges to be levied.—(1) Compensation shall be paid by the Mukhya Nagar Adhikari to the owner of any building or land required for a public street under Sections 280, 281, 282 or 283 or for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Mukhya Nagar Adhikari :

Provided that —

(i) any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation ;

(ii) if any such increase in value exceeds the amount of loss sustained or expenses incurred by the said owner, the Mukhya Nagar Adhikari may recover from such owner half the amount of such excess as a betterment charge.

(2) If in consequence of an order to set forward a building made by the Mukhya Nagar Adhikari under Section 284, the owner of such building sustains any loss or damage, compensation shall be paid to him by the Mukhya Nagar Adhikari for such loss or damage after taking into account any increase in value likely to accrue from the set-forward.

(3) If the additional land which will be included in the premises of any person required or permitted under Section 284 to set-forward a building belongs to the Mahapalika, the order or permission of the Mukhya Nagar Adhikari to set-forward the building shall be sufficient conveyance to the

said owner of the said land and the price to be paid to the Mahapalika by the said owner for such additional land and the other terms and conditions of the conveyance shall be set forth in the said order or permission.

(4) If, when the Mukhya Nagar Adhikari requires a building to be set-forward, the owner of the building is dissatisfied with the price fixed to be paid to the Mahapalika or any of the other terms or conditions of the conveyance, the Mukhya Nagar Adhikari, shall, upon the application of the said owner at any time within fifteen days after the said terms and conditions are communicated to him, refer the case for the determination of the Judge.

Provisions regarding Private streets

286. Owner's obligation to make a street when disposing of land as building sites.—If the owner of any land utilizes, sells, leases or otherwise disposes of such land or any portion or portions of the same as site for the construction of buildings, he shall save in such cases as the site or sites may abut on an existing public or private street, lay down and make a street or streets or road or roads giving access to the site or sites and connecting with an existing public or private street.

287. Notice of laying out lands for building and for private streets.—(1) Every person who intends—

- (a) to sell or let on lease any land subject to a covenant or agreement on the part of a purchaser or lessee to erect buildings thereon ;
- (b) to divide land (whether unbuilt or partly built) into building plots ; or
- (c) to use any land or a portion thereof or permit the same to be used for building purposes ; or
- (d) to make or lay out a private street, whether it is intended to allow the public a right of passage or access over such street or not ;

shall give written notice of his intention to the Mukhya Nagar Adhikari in the manner laid down in the rules and bye-laws.

(2) The Mukhya Nagar Adhikari shall proceed with the notice under sub-section (1) in the manner prescribed by rules and bye-laws and subject to such general directions as the Executive Committee may give in this behalf from time to time, determine the laying out of land for building, the dimensions and area of each building plot, the level, direction, width and means of drainage of every private street, the kind and number of trees to be planted and reared beside such streets and the height and means of drainage and ventilation of and access to all buildings to be erected on such land or on either side of such street :

Provided that if the Mukhya Nagar Adhikari neglects or omits for sixty days after the receipt of the notice under sub-section (1) or of the plans, sections, descriptions, schemes or further information, if any, called for under the rules, to communicate to the person who gave the notice his disapproval with regard to any of the matters such person may, by a written communication call the attention of the Mukhya Nagar Adhikari to the neglect or omission and if such neglect or omission continues for a further period of thirty days from the date of the receipt of the written communication by the

Mukhya Nagar Adhikari, the proposal of the said person shall be deemed to have been approved by the Mukhya Nagar Adhikari :

Provided further that nothing contained herein shall be construed to authorize any person to act in contravention of any provisions of the Act or any bye-laws.

(3) When the Mukhya Nagar Adhikari signifies in writing to the said person his approval of the said work under certain conditions or without any conditions or when the said work is deemed to have been approved by the Mukhya Nagar Adhikari as aforesaid, the said person may at any time within one year from the date of the delivery of the notice under sub-section (1) to the Mukhya Nagar Adhikari, proceed with the said work in accordance with the intention as described in the notice or in any of the documents aforesaid and in accordance with the conditions, if any, prescribed by the Mukhya Nagar Adhikari, but not so as to contravene any of the provisions of this Act or any rule or bye-law.

Comments

Analogous law—Section 287(2) proviso is analogous to Section 205 of the U. P. Municipalities Act.

Notice under this section—Requisites—The applicant has only to intimate the Board that it had neglected to sanction the plan. Nothing more is required to be stated, vide *Krishna Narayan v. Municipal Board, Allahabad*.¹

288. Land not to be appropriated for building and private street not to be laid out until expiration of notice.—(1) No person shall sell, let, use or permit the use of any land whether undeveloped or partly developed for building or divide any such land into building plots, or make or lay out any private street—

- (a) without complying with the provisions of Section 285 ;
- (b) unless such person has given previous written notice of his intention as provided in Section 237 nor until the expiration of sixty days from delivery of such notice, nor otherwise than in accordance with such directions (if any), as may have been fixed and determined under sub-section (2) of Section 287 ;
- (c) after the expiration of the period of one year specified in sub-section (3) of Section 287 ;

Provided that if a person who is entitled to proceed with any work under sub-section (1) of Section 237 fails so to do within the period of one year specified therein he may at any time give fresh notice of his intention to execute such work and such notice shall be treated as a new notice under sub-section (1) of Section 237 ;

- (d) unless such person gives written notice to the Mukhya Nagar Adhikari of the date on which he proposes to proceed with any work which he is entitled to carry out and commences such work within seven days of the date mentioned in the notice.

(2) If any act be done or permitted in contravention of this section, the Mukhya Nagar Adhikari may by written notice require any person doing or permitting such act—

- (a) to show cause on or before such day as shall be specified in such notice by statement in writing subscribed by him in that behalf

1. A. I. R. 1955 N. U. C. (Alld.) 2778.

and addressed to the Mukhya Nagar Adhikari, why the laying out, plotting, street or building contravening this section should not be altered to the satisfaction of the Mukhya Nagar Adhikari, or, if that be in his opinion impracticable, why such street or building should not be demolished or removed or why the land should not be restored to the condition in which it was prior to the execution of the unauthorized work, or

- (b) to attend personally or by an agent duly authorized by him in that behalf on such day and at such time and place as shall be specified in such notice and show cause as aforesaid.

(3) If such person shall fail to show cause to the satisfaction of the Mukhya Nagar Adhikari why such street or building should not be so altered, demolished or removed or why such land should not be so restored, the Mukhya Nagar Adhikari may cause the work of alteration, demolition, removal or restoration to be carried out and the expenses thereof shall be paid by the said person.

(4) In a case of contravention of the provisions of Section 286, the Mukhya Nagar Adhikari, may, instead of taking action as provided in subsection (3), proceed to make a street or streets or road or roads giving access to the site or sites referred to in Section 286 and connecting with an existing public or private street and recover the amount of expenditure incurred in doing so from the owner or owners of the site or sites in such proportion or in such manner as may be prescribed.

289. Levelling and drainage of private streets and means of access.—(1) If any private street or any other means of access to a building be not levelled, metalled, flagged or paved, sewered, drained, channelled, lighted, or provided with trees for shade to the satisfaction of the Mukhya Nagar Adhikari, he may, with the sanction of the Executive Committee, by written notice, require the owner or owners of the several premises fronting or adjoining the said street or other means of access or abutting thereon or to which access is obtained through such street or other means of access or which will benefit by works executed under this section to carry out any one or more of the aforesaid requirements in such manner as he shall direct.

(2) If the requirement or requirements is or are not carried out within the time and in the manner specified in the notice, the Mukhya Nagar Adhikari may, if he thinks fit, carry out the same and the expenses incurred shall be recovered from the owner or owners in default under Chapter XXI.

(3) Where the recovery is to be made from two or more owners in default, it shall be made according to the frontage of their respective premises and in such proportion as may be settled by the Executive Committee.

290. Powers to declare private streets as public streets.—(1) When any private street has been levelled, metalled, flagged or paved, sewered, drained, channelled and made good to the satisfaction of the Mukhya Nagar Adhikari he may and, upon the request of the owners or of any of the owners of such street, shall, if lamp-posts and other apparatus necessary for lighting such street have been provided to his satisfaction, declare the same to be a public street by notice in writing put up in any part of such street, and thereupon the same shall become a public street and vest in the Mahapalika as such:

Provided that no such street shall become a public street, if, within one month after such notice has been put up, the owner of such street or the

greater part thereof shall by notice in writing to the Mukhya Nagar Adhikari, object thereto.

(2) The Mukhya Nagar Adhikari may, by public notice in writing put up in any part of a street which is not a public street and is not covered by sub-section (1), give intimation of his intention to declare the same a public street. Within two months after such notice has been so posted up the owner or owners of such street may lodge objections at the office of the Mahapalika against the notice. The Executive Committee shall consider the objections lodged and if it rejects them the Mukhya Nagar Adhikari shall by further public notice posted up in such street or such part, declare the same to be a public street.

Comments

Analogous Law.—Sub-clause (2) is analogous to Section 221 of the U. P. Municipalities Act.

"Street" means public street.—See Head note "street" in Section 2 (74) in this Act—See case of *Arjun Lal v. Maharaj Man Singh*.¹

Rights of owner of land over which a street is constructed—Right continues.—The rights of an owner of such a land over which a public street has been constructed are clearly not interfered with by erection of another construction by another person with due permission of the Municipal Board. See *Arjun Lal v. Maharaj Man Singh*.¹

Declaration of public Street—Opportunity to the owner of the land must be given—Procedure.—If a requisition has been made as contemplated under Section 212 of the Municipalities Act the Board is entitled to issue a notification but in the other cases the Board may take steps to declare the particular street to be a public street. There was no requisition under Section 212, therefore, the Board exercised its powers under the first part of of Section 221 and published a notification that it intended to declare it as a public street. That declaration by itself means assumption of the Board that it is a street and any such assumption is likely to affect the fundamental right of the owner to hold and possess the property and before such decision can be made the opportunity must have been given to the owner to show cause against any such action. The argument which may be advanced against this contention is that such an opportunity is provided for under the second part of Section 221 where it gives a right to the owner of the street to file objections and it is open to the owner to object to the fact also that it is not a street at all. If it is admitted then obviously the right of the opportunity to consider the objections necessarily implies an obligation to give an opportunity to the owner to be heard and substantiate his case, that it is not a street at all. The order of the Administrator in a case was only in these terms: "Objections rejected. Necessary action to declare the lane as a public lane be taken". It was held that it could not be said on reading of this order itself that the Administrator ever applied his mind to the objections made by the petitioners and ever considered the question whether it was a street or not. If that is so, then it cannot be said that the objections were considered by the Administrator, vide *Lallai Ram v. Allahabad Municipality*.²

1. 1934 A. L. J. 418 : A. I. R. 1934 Alld. 338 (D. B.)

2. A. I. R. 1958 Alld. 209 (210).

291. Applicability of Sections 289 and 290 when a street is in part public and in part private.—If a portion only of any street is a public street, the other portion of such street may for all purposes of Sections 289 and 290 be deemed to be a private street.

Projections and Obstructions

292. Prohibition of projection upon streets, etc.—(1) Except as provided in Section 293, no person shall erect, set up, add to, or place against or in front of any premises any structure or fixture, which will—

- (a) overhang, jut or project into, or in any way encroach upon or obstruct in any way the safe or convenient passage of the public along any street, or
- (b) jut or project into or encroach upon any drain or open channel in any street, so as in any way to interfere with the use or proper working of such drain or channel or to impede the inspection or cleansing thereof.

(2) The Mukhya Nagar Adhikari may, by written notice, require the owner or occupier of any premises to remove or to take such other order as he may direct with any structure or fixture which has been erected, set up, added to or placed against, or in front of, the said premises in contravention of this section or of any law in force in the City on the day immediately preceding the appointed day.

(3) If the occupier of the said premises removes or alters any structure or fixture in accordance with such notice, he shall be entitled, unless the structure or fixture was erected, set up or placed by himself, to credit in account with the owner of the premises for all reasonable expenses incurred by him in complying with the said notice.

(4) If any such structure or fixture as is described in sub-section (1) has been erected, set up, added to, or placed against or in front of any premises at any time before the first day of April, 1901, the Mukhya Nagar Adhikari may give notice as aforesaid to the owner or occupier of the said premises :

Provided that if in any such case the structure or fixture was lawfully erected, set up, added to or placed, compensation shall be paid by the Mukhya Nagar Adhikari to every person who sustains loss or damage by the removal or alteration thereof.

Comments

Analogous Law.—Section 292 (2) Section 211 of the U. P. Municipalities Act Section 292 (4). Proviso of Section 211.

Civil suit whether barred—No—The orders under the analogous provision of Section 211 of the Municipalities Act, are made subject to appeal under Section 318 of that Act and it is also provided in the barring Section 321 thereof that no such order can be questioned in the Civil Court and so held in *Mathura Prasad v. Emperor*¹ and *Municipal Board Bareilly v. Suraj Bali*² but there is no such provision under this Adhiniyam where the orders passed under section 292 of the Adhiniyam may have been subjected to an appeal and also there is no such provision where such orders may have been barred from being questioned in Civil Court.

1. A. I. R. 1942 All. 441 (442) : 1942 A. L. J. 591 : 44 Cr. L. J. 84.

2. A. I. R. 1946 Oudh 238 (240) : 1946 O. W. N. 236 : 225 I. C. 194.

Notice and its service under this Section.—It may be addressed to the firm instead of being addressed to the partners individually *vide Mathura Prasad v. Emperor*.¹ Service of such a notice is valid even if it is issued in the name of the firm and served upon a Munim of that firm instead of the partner himself, *vide Mathura Prasad v. Emperor*.¹ It is not necessary that when a Board issues a notice it should make an offer of compensation therein as well. In absence of such offer, the notice would not be bad in law, *vide Municipal Board, Rae Barielly v. Suraj Bali*.²

293. Projections over streets may be permitted in certain cases.—(1) The Mukhya Nagar Adhikari may give a written permission, on such terms as he shall in each case think fit, to the owner or occupier of any building abutting on any street—

- (a) to erect an arcade over such street or any portion thereof, or
- (b) to put up a verandah, balcony, arch, connecting passage, sun-shade, weather-frame, canopy, awning or other such structure or thing projecting from any storey over or across any street or portion thereof :

Provided that no permission shall be given by the Mukhya Nagar Adhikari for the erection of an arcade in any public street in which the construction of arcade has not been generally sanctioned by the Mahapalika or where the width of the street between kerbs is less than sixty feet.

(2) The provisions of Section 292 shall not be deemed to apply to any arcade, verandah, balcony, arch, connecting passage, sun-shade, weather-frame, canopy, awning or other structure or thing erected or put up under and in accordance with the terms of a permission granted under this section.

(3) The Mukhya Nagar Adhikari may at any time, by written notice, require the owner or occupier of any building to remove a verandah, balcony, sun-shade, weather-frame or the like put up in accordance with the provisions of sub-section (1) and such owner or occupier shall be bound to take action accordingly but shall be entitled to compensation for the loss cause to him by such removal and the cost incurred thereto.

294. Ground floor doors, etc., not to open outwards on streets.—

(1) No door, gate, bar or ground floor window shall without a licence from the Mukhya Nagar Adhikari, be hung, or placed so as to open outwards upon any street.

(1) The Mukhya Nagar Adhikari may at any time, by written notice, require the owner of any premises on the ground floor of which any door, gate, bar or window opens outwards upon a street or upon any land required for the improvement of a street, in such manner as, in the opinion of the Mukhya Nagar Adhikari, to obstruct the safe or convenient passage of the public along such street, to have the said door, gate, bar or window altered so as not to open outwards.

295. Other prohibitions relating to streets.—(1) No person shall, except with the permission of the Mukhya Nagar Adhikari under Section 293 or 300 erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature, or any fixture in or upon any street or upon or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an

1. A. I. R. 1942 Alld. 441 (442) : 1942 A. L. J. 591 : 44 Cr. L. J. 84.

2. A. I. R. 1946 Oudh 238 (240) : 1946 O. W. N. 236 : 225 I. C. 194.

encroachment upon, or a projection over, or to occupy, any portion of such street, channel, drain, well or tank :

Provided that nothing in this section shall be deemed to apply to any erection or thing to which clause (c) of sub-section (1) of Section 302 applies.

(2) No person shall except with the written permission of the Mukhya Nagar Adhikari—

- (a) place or deposit upon any street, or upon any open channel, drain or well in any street or in any public place any stall, chair, bench, box, ladder, bale or other thing whatever, so as to form an obstruction thereto or encroachment thereon ;
- (b) project, at a height of less than twelve feet from the surface of the street, any board or chair, beyond the line of the plinth or any building over any street, or over any open channel, drain, well or tank in any street ;
- (c) attach to suspend from, any wall or portion of a building abutting on a street, at a lower height than aforesaid anything whatever :

Provided that nothing in clause (a) applies to buliding materials.

(3) No person shall tether any animal or cause or permit the same to be tethered by any member of his family or household, in any public street and any animal tethered as aforesaid may be removed by the Mukhya Nagar Adhikari, or by any Mahapalika officer or servant, who shall deal therewith as with an animal found straying.

Comments

Analogous Law.—Some what similar to Section 220 of the Municipalities Act.

Scope.—Under Section 220 of the Municipalities Act, the kind of user or occupation which has been restricted is only like using the street for sale of articles or for setting up of booths or stalls, etc., and requires necessary permission but does not restrict the privilege like passing and repassing through a public street, vide *G. A. Singh v. State of U. P.*¹ In the present Section 295 of the Adhiniyam, the restriction is in respect of user, or occupation like using the street for setting up booths, etc., in the form of obstruction and encroachment only and not for sale of articles in case no obstruction is caused thereby.

296. Mukhya Nagar Adhikari may, without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of Act.—The Mukhya Nagar Adhikari may, without notice, cause to be removed —

- (a) any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature or any fixture which shall be erected, or set up in or upon or over any street or upon or over any open channel, drain, well or tank contrary to the provisions of this Act after the appointed day ;

1. 1970 A. L. J. 243 (253).

- (b) any stall, chair, bench, box, ladder, bale, board or shelf, or any other thing whatever placed, deposited, projected attached or suspended in, upon from or to any place in contravention of this Act ;
- (c) any article whatsoever hawked or exposed for sale in a public place or in any public street in contravention of the provision of this Act and any vehicle, package, box or any other thing in or on which such article is placed.

297. Power to require trimming of hedges and trees.—The Mukhya Nagar Adhikari may, by notice, require the owner or occupier of any land to cut or trim the hedges growing thereon and bordering on a street, or any branches of trees growing thereon which overhang a street and obstruct the same or cause danger.

298. Power to remove accidental obstructions.—When a private house, wall or other erection or anything fixed thereto or a tree shall fall down and obstruct a public drain or encumber a street, the Mukhya Nagar Adhikari may remove such obstruction or encumbrance at the expense of the owner of the same and may recover such expense in the manner provided by Chapter XXI, or may, by notice, require the owner to remove the same within a time to be specified in the notice.

299. Power to require removal of any structure or fixture erected or set up before the appointed day.—(1) The Mukhya Nagar Adhikari may, by written notice, require the owner or occupier of any premises contiguous to, or in front of, or in connexion with which any wall, fence, rail, post, step, booth or other structure or fixture which it would be unlawful to erect or set up under this Act, has been erected or set up before the appointed day, to remove the said wall, fence, rail, post, step, stall or other structure or thing.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title (or where such period is less than thirty years a period of thirty years,) or that it was erected with the consent of any Mahapalika authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the Mahapalika shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

Comments

Appointed day—1st February, 1960.

Estoppel and Acquiescence against demolition—There does not appear any provision in this Adhiniyam or any other law to establish that if the Nagar Mahapalika taxes a particular building and realise the tax from an individual, it would be estopped from claiming that the building was an unauthorised construction and liable to be removed under the Adhiniyam. The provision entitling the Mahapalika to assess House and Water tax relates to all buildings and lands within the territorial limits of the Mahapalika. It does not confine itself to only legally constructed buildings. Further, if a building is occupied by a trespasser, then such a building is also liable to tax, and the occupier is primarily responsible to pay the tax. The liability to tax does not depend on the lawful origin or the lawful occupation of the building. It cannot, therefore, be said that the act of assessing and realizing the House and Water Tax in relation to the building in question disentitled

the Mahapalika from taking action under Section 299 of this Adhiniyam, vide *Lala Ram v. Nagar Mahapalika, Allahabad*¹. But a contrary view has earlier been expressed by the Calcutta High Court in *Ghunni Lal v. Corporation of Calcutta*² which does not appear to have been referred to the Lordship of the Allahabad High Court.

300. Mukhya Nagar Adhikari may permit booths, etc., to be erected on streets on festivals.—With the concurrence of the District Magistrate or such other officer as the District Magistrate may nominate in this behalf from time to time the Mukhya Nagar Adhikari may grant a written permission for the temporary erection of a booth and any other such structure on any street on occasions of ceremonies and festivals.

Provisions concerning execution of works in or near to streets

301. Execution of works in or near to streets.—Whenever there is any work in execution in or near to any street on behalf of the Mahapalika the Mukhya Nagar Adhikari shall take such steps in regard to safety and convenience as he may be required to take under the rules. Whilst any such work as aforesaid or any work which may lawfully be executed in a street is in progress the Mukhya Nagar Adhikari may in the manner laid down in rules close the street wholly or partly for traffic or for traffic of any such description as he may deem fit.

302. Streets not to be opened or broken up and building materials not to be deposited thereon without permission.—(1) No person other than the Mukhya Nagar Adhikari or a Mahapalika Officer or servant as such shall, without the written permission of the Mukhya Nagar Adhikari or without other lawful authority—

(a) open, break up, displace, take up or make any alteration, in or cause any injury to, the soil or pavement, or any wall, fence, post, chain or other material or thing forming part of any street or in any open space vested in the Mahapalika ;

(b) deposit any building materials in any street or open space vested in the Mahapalika ;

(c) set up in any street or open space vested in the Mahapalika any scaffold or any temporary erection for the purpose of any work whatever, or any posts, bars, rails, boards or other things by way of enclosure, for the purpose of making mortar or depositing bricks, lime, rubbish or other materials.

(2) Any permission granted under clause (b) or (c) of sub-section (1) shall be terminable at the discretion of the Mukhya Nagar Adhikari, on his giving not less than twenty-four hours' written notice of the termination thereof to the person to whom such permission was granted.

(3) The Mukhya Nagar Adhikari may, without notice—

(a) cause the soil or pavement or any wall, fence, post, bar or other material or thing forming part of the street to be restored to the condition it was in before any opening, breaking up, displacement or alteration or injury made or done without the permission of the Mukhya Nagar Adhikari under sub-section (1) ;

1. 1970 A. W. R. 42 (43).

2. 11 C. W. N. 30 (32, 34) (D. B.).

- (b) except in cases in which permission has been applied for under clause (b) of sub-section (1) for the deposit of building materials in any street and no reply has been sent to the applicant within seven days from the date of the application, cause to be removed any building materials, or any scaffold, or any temporary erection, or any posts, bars, rails, boards or other things by way of enclosure, which have been deposited or set up in any street without the permission or authority specified in sub-section (1), or which, having been deposited or set up with such permission or authority, have not been removed within the period specified in the notice issued under sub-section (2).

303. Precautions for public safety to be taken by person to whom permission is granted under Section 302.—(1) Every person to whom any permission is granted under Section 302 shall, at his own expense, cause the place where the soil or pavement has been opened or broken up or where he has deposited building materials, or set up any scaffold, erection or other thing, to be properly fenced and guarded, and, in all cases in which the same is necessary to prevent accidents, shall cause such place to be well lighted during the night.

(2) Every person to whom permission is granted under Section 302 to open or break up the soil or pavement of any street, or who, under other lawful authority, opens or breaks up the soil or pavement of any street, shall with all convenient speed complete the work for which the same shall be opened or broken up, and fill in the ground and reinstate and make good the street or pavement so opened or broken up without delay to the satisfaction of the Mukhya Nagar Adhikari :

Provided that if the said person shall fail to reinstate and make good the street or pavement as aforesaid, the Mukhya Nagar Adhikari may restore such street or pavement, and the expenses incurred by the Mukhya Nagar Adhikari in so doing shall be paid by the said person.

(3) The Mukhya Nagar Adhikari may, by written notice, require any person to whom permission is granted under Section 302 to open or break up the soil or pavement of any street, or who under any other lawful authority, opens or breaks up the soil or pavement of any street for the purpose of executing any work, to make provisions to his satisfaction for the passage or diversion of traffic for securing access to the premises approached from such street and for any drainage, water supply or means of lighting which may be interrupted by reason of the execution of the said work.

304. Buildings at corners of streets.—(1) The Mukhya Nagar Adhikari may, with the approval of the Executive Committee, require by written order the corner of any building which has already been erected or which is to be newly erected or which is to be reconstructed or repaired and which is situated at the junction of two or more streets to be rounded or splayed off to such height and in such manner as he may determine and may also in such order impose such conditions as he deems necessary as to the construction of a compound wall or fence or hedge or any other structure whatsoever or the planting or retention of any tree on the premises appurtenant to such building.

(2) Compensation shall be paid by the Mukhya Nagar Adhikari for the loss or damage caused by the issue of an order under sub-section (1).

(3) In determining such compensation, allowance shall be made for any benefit accruing to the same premises from the improvement of the streets.

Sky-signs and Advertisements

305. Regulations as to sky-signs.—(1) No person shall, without the written permission of the Mukhya Nagar Adhikari, erect, fix or retain any sky-sign of the kind prescribed by rules whether existing on the appointed day or not. Such written permission shall be granted, or renewed, for any period not exceeding two years from the date of each such permission or renewal, subject to the condition that such permission shall be deemed to be void if—

- (a) any addition is made to the sky-sign except for the purpose of making it secure under the direction of the Mukhya Nagar Adhikari ;
- (b) any change is made in the sky-sign or any part thereof ;
- (c) the sky-sign or any part thereof fall either through accident, decay or any other cause ;
- (d) any addition or alteration is made, to or in, the building or structure upon or over which the sky-sign is erected, fixed or retained, involving the disturbance of the sky-sign or any part thereof ;
- (e) the building or structure upon or over which the sky-sign is erected, fixed or retained becomes unoccupied or be demolished or destroyed.

(2) Where any sky-sign shall be erected, fixed or retained after the appointed day upon or over any land, building or structure, save and except as permitted as hereinbefore provided the owner or person in occupation of such land, building or structure shall be deemed to be the person who has erected, fixed or retained such sky-sign in contravention of the provisions of this section, unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

(3) If any sky-sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Mukhya Nagar Adhikari may, by written notice, require the owner or occupier of the land, building or structure upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign.

306. Regulation and control of advertisements.—(1) The Mukhya Nagar Adhikari may, by notice in writing, require the owner or the person in occupation of any land, building, wall, hoarding or structure to take down or remove within such period as is specified in the notice, any advertisement upon such land, building, wall, hoarding or structure.

(2) If the advertisement is not taken down or removed within such period, the Mukhya Nagar Adhikari may cause it to be taken down or removed, and the expenses reasonably incurred on taking down or removal thereof shall be paid by such owner or person.

(3) The provisions of this section shall not apply to any advertisement which—

- (a) is exhibited within the window of any building ;

- (b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same ;
- (c) relates to the business of any railway administration ;
- (d) is exhibited within any railway station or upon any wall or other property of a railway administration, except any portion of the surface of such wall or property fronting any street.

Dangerous places and places where some work affecting human safety or convenience is carried on

307. Hoards to be set up during work on any building adjacent to street.—(1) No person who proposes to build, take down or rebuild any building or wall, or to alter or repair any part of any building or wall, shall in any case in which the footway, in any adjacent street will be thereby obstructed or rendered less convenient, commence doing so without first having caused to be put up a proper and sufficient hoard or fence, with a convenient platform and hand-rail if there be room enough for the same and the Mukhya Nagar Adhikari shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(2) No hoard or fence shall be so put up without the previous written permission of the Mukhya Nagar Adhikari and every such hoard or fence, put up with such permission, with such platform and hand-rail as aforesaid, shall be continued standing and maintained in good condition, to the satisfaction of the Mukhya Nagar Adhikari, by the person who carries on the work, during such time as may be necessary for the public safety and convenience and, in all cases in which the same is necessary to prevent accidents, the said person shall cause such hoard or fence to be well lighted during the night.

(3) The Mukhya Nagar Adhikari may, by written notice, require the person aforesaid to remove any hoard or fence so put up.

308. Mukhya Nagar Adhikari to take proceedings for repairing or enclosing dangerous places or place where some work affecting safety or convenience is carried on.—(1) If any place is, in the opinion of the Mukhya Nagar Adhikari, from want of sufficient repair, protection or enclosure or owing to some work being carried on thereupon dangerous to passengers along a street, or to the neighbourhood thereof or if any such work, in the opinion of the Mukhya Nagar Adhikari, affects the safety or convenience of such persons, he may by notice in writing require the owner or occupier thereof to repair, protect or enclose the said place or take such other step as shall appear to the Mukhya Nagar Adhikari necessary in order to prevent danger therefrom or to ensure safety or convenience of such persons.

(2) The Mukhya Nagar Adhikari may, before giving any such notice or before the period of any such notice has expired, take such temporary measures as he thinks fit to prevent danger from the said place or to ensure safety or convenience at such work, and any expense incurred by the Mukhya Nagar Adhikari in taking such temporary measure shall be paid by the owner or occupier of the place to which the said notice refers.

Comments

Analogous law—Almost similar to Section 263 of the U. P. Municipalities Act.

Effect of non-compliance—*Mahapalika is liable to pay damages*—Where due to the non-compliance of the similar provision, the Municipality did not demolish a dangerous buildings which subsequently collapsed and took the lives of certain persons, their heir had to file suit for compensation against the owner of the building and the Municipality. It was held in *Municipal Board, Meerut v. Smt. Maha Kaur*¹ that both were liable to pay compensation. The Act casts upon the Municipality certain statutory duties failure to perform which may give rise to a cause for a claim of compensation against the Municipality which in not taking steps under sub-section (2) of this section failed to perform its statutory duty. Section 125 of that Act does not absolve the Board from payment of such compensation.

Notice under section—*Landlord demolished building—Whether lease becomes void*—*No*—In the first place the demolition of a building by the landlord, even though in pursuance of a notice under Section 263(1) of the Municipalities Act, cannot be said to be a destruction of the premises by an irresistible force within the meaning of the said clause of Section 108 of T. P. Act. In the second place the option to avoid the lease under this clause rests with the tenant and not with the landlord, vide *Rahim Bux v. Mohd. Shafi*.²

309. Protective measures during demolition work.—(1) No person who proposes to take down a building or a part thereof, shall commence doing so without providing in addition to such hoard or fence which he may be required to provide under Section 307, screens extending to the full height of such building on all sides thereof so as to prevent pollution of the surrounding air with dust or injury or damage caused by the falling of any debris, bricks, wood and other material.

(2) If any such work is commenced in contravention of sub-section (1) the Mukhya Nagar Adhikari may cause it to be stopped forthwith and any person carrying it out to be removed from the premises by a police officer.

Lighting of Streets

310. Public streets to be lighted.—(1) The Mukhya Nagar Adhikari shall—

- (a) take measures for lighting in a suitable manner the public streets, Mahapalika gardens and open spaces and Mahapalika markets and all buildings vesting in the Mahapalika ;
- (b) procure, erect and maintain such number of lamps, lamp-posts and other appurtenances as may be necessary for the said purpose ; and
- (c) cause such lamps to be lighted by means of oil, gas, electricity or such other light as the Mahapalika shall from time to time determine.

(2) The Mukhya Nagar Adhikari may place and maintain electric wires for the purpose of lighting such lamps under, over, along or across, and

1. 1970 A. L. J. 797 (801).

2. A. I. R. 1971 All. 16 (17).

posts, poles, standards, stays, struts, brackets, and other contrivances for carrying, suspending or supporting lamps or electric wires in or upon any immovable property without being liable to any claim for compensation therefor :

Provided that such wires, posts, poles, standards, stays, struts, brackets and other contrivances shall be so placed as to occasion the least practicable inconvenience or nuisance to any person.

Watering of Streets

311. Measures for watering streets.—The Mukhya Nagar Adhikari may—

- (a) take measures for having the public streets watered at such time and seasons and in such manner as he shall think fit ;
- (b) procure and maintain such vehicles, animals and apparatus as he shall think fit for the said purpose.

Miscellaneous

312. Prohibition of removal, etc., of lamps or any Mahapalika property on streets.—(1) No person shall, without lawful authority, take away, or wilfully break, throw down or damage—

- (a) any lamp, lamp-post or lamps-iron set up in any public street or in any Mahapalika garden, open space or market or building vesting in the Mahapalika ;
- (b) any electric wire for lighting any such lamps ;
- (c) any post, pole, standard stay, strut, bracket or other contrivance for carrying, suspending or supporting any such electric wire or lamp ;
- (d) any property of the Mahapalika on any street ;

and no person shall wilfully extinguish the light or damage any appurtenance of any such lamp.

(2) If any person shall, through negligence or accident or otherwise break any lamp set up in any public street or Mahapalika market, garden or public place or building vesting in the Mahapalika or shall break or damage any property of the Mahapalika on any street, he shall pay the expenses of repairing the damage so done by him.

313. State Government may extend provisions of Chapter outside limits of city.—The State Government may, by order which shall be published in the official *Gazette*, apply to any area to be specified in the order but not lying beyond a distance of two miles from the limits of the City, the provisions of any section in this Chapter and of rules made thereunder, subject to such adaptations whether by way of modification, addition or omission, as it may deem to be necessary and expedient and thereupon the provisions and rules so applied shall have effect in that area as if it were within the City.

314. Power to make rules.—(1) The State Government may make rules for the purposes of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers such rules may provide for—

- (a) manner in which the Mahapalika shall sanction the closing of any public street and the disposal of the site of such street under Section 273 ;
- (b) manner in which the sanction of the Executive Committee to prescribe a fresh street line in place of any existing line shall be given under Section 279 ;
- (c) manner in which a person shall give notice of his intention to sell, let, *etc.*, land for building purposes or to lay out a private street under Section 287 and the procedure to be adopted by the Mukhya Nagar Adhikari in dealing with such notice including, asking for more information or authenticated plan, *etc.* ;
- (d) steps to be taken under Section 301 by the Mukhya Nagar Adhikari for safety and convenience of the public when any work in or near to streets is in execution.

CHAPTER XIII

Building Regulations

Notice regarding Erection, etc. of Buildings

315. Definition.—In this Chapter the expression “to erect building” shall include—

- (a) subject as may be prescribed by rules the re-erection of a substantial portion of any existing building,
- (b) the conversion into a dwelling house of any building or part of a building not originally intended or already used for human habitation,
- (c) the conversion by any structural alteration of a single tenement or two or more tenements in a building into a greater or lesser number of dwelling houses so as to affect its drainage or sanitary arrangement or its stability,
- (d) the conversion by any structural alteration of any building into a place of religious worship or into a sacred building not originally meant or constructed for such purpose,
- (e) the covering or roofing of an open space between walls or buildings as regards the structure which is formed by roofing or covering such space,
- (f) the conversion into a stall, shop, warehouse or godown of a building not originally constructed for any such use,
- (g) the construction in a wall adjoining any street or land not vested in the owner of the wall, a door opening on such street or land, and
- (h) any other operation declared by a bye-law made in this behalf to be deemed to be erection of a building.

Comments

Notes—Sections 315 to 342, *viz.*, Chapter XIII in this Act stand suspended *w. e. f.* 1st January, 1967 from coming into force of the similar provisions contained in the U. P. Regulation of Building Operations Act.

316. Notice of erection of building.—Every person intending to erect a building shall give to the Mukhya Nagar Adhikari a notice in writing of his intention to do so in such form and manner and containing such particulars as may be prescribed by bye-laws.

317. Notice of repairs, alteration, etc., in building.—Every person intending—

- (a) to make any addition to a building,
- (b) to make any alteration or repairs to a building, not being a frame-building, involving the removal or re-erection of any external or party-wall thereof or of any wall which supports the roof thereof to an extent exceeding one-half of such wall above the plinth level, such half to be measured in superficial feet,
- (c) to make any alteration or repairs to a frame-building, involving the removal or re-erection of more than one-half of the posts or beams in any such wall thereof as aforesaid, or involving the removal or re-erection of any such wall thereof as aforesaid, to an extent exceeding one-half of such wall above plinth level, such half to be measured in superficial feet,
- (d) to make any alteration in a building involving—
 - (i) the sub-division of any room in such building so as to convert the same into two or more separate rooms,
 - (ii) the conversion of any passage or space in such building into a room or rooms,
 - (iii) to repair, remove, construct, re-construct or add to any portion of a building abutting on a street which stands within the regular line of such street,
- (e) to carry out any work in a building involving—
 - (i) the construction or re-construction of a roof,
 - (ii) the conversion of a roof into a terrace,
 - (iii) the conversion of a terrace into a roof, or
 - (iv) the construction of a lift shaft,
- (f) to carry out any repairs to a building involving the construction of a floor of a room (excluding the ground floor),
- (g) to permanently close any door or window in an external wall, or
- (h) to remove or re-construct the principal staircase or to alter its position,

shall give notice in writing to the Mukhya Nagar Adhikari in such form and containing such information as may be required to be furnished under the bye-laws framed therefor and accompanied by such documents and plans as may be prescribed.

318. Rejection of plan, etc., if not drawn in the prescribed manner or where the applicant fails to supply the particulars called for by the Mukhya Nagar Adhikari.—Any plan, section, description, structural drawings or structural calculations and any notice not fulfilling the conditions

prescribed therefor or in respect of which the further particulars or details are not supplied to the Mukhya Nagar Adhikari within such period as may be fixed by him, shall not be treated as sufficient and valid for the purposes of this Act.

319. Period within which Mukhya Nagar Adhikari is to grant or refuse to grant permission to execute work.—Within thirty days after the receipt of any application made under Section 316 or Section 317 or of any information or of documents or further information or documents required under rules or bye-laws the Mukhya Nagar Adhikari shall by written order either grant such permission or refuse on one or more of the grounds mentioned in Section 321 or Section 322 to grant it.

320. Reference to Executive Committee if Mukhya Nagar Adhikari delays grant or refusal of approval or permission.—(1) If, within the period laid down in Section 318 or Section 319, as the case may be, the Mukhya Nagar Adhikari has neither given nor refused his permission to erect building or to execute work referred to in Section 317 as may have been applied for, the Executive Committee shall be bound, on the written request of the applicant, to determine by written order whether such approval or permission should be given or not.

(2) If the Executive Committee does not, within one month from the receipt of such written request, determine whether such permission should be given or not, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

Comments

Analogous Law—Sub-section (3) of Section 180 of the U. P. Municipalities Act.

321. Grounds on which approval of site for or permission to construct or reconstruct building may be refused.—(1) The only grounds on which permission to erect a building or to execute any work referred to in Section 317 may be refused, are the following, namely—

- (a) that the work or the use of the site for the work or any of the particulars comprised in the site-plan, ground-plan, elevations sections, or specifications would contravene some specified provision of any law or some specified order, rule, declaration or bye-law made under any law ;
- (b) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or bye-laws or is not signed as required under rules or bye-laws ;
- (c) that any information or documents required by the Mukhya Nagar Adhikari under the rules or bye-laws has or have not been duly furnished ;
- (d) that the proposed building would be an encroachment upon Government or Mahapalika land ;
- (e) that the site of such building does not abut on a street or a projected street, and there is no access to such building from any such street by a passage or pathway appertaining to such site and not less than 12 feet wide at any part ;
- (f) that the site of the proposed building is of the nature specified in Section 323 ;

- (g) that the site for the work forms a part of the areas, layout plan of which has not been sanctioned as provided in Section 287 ;
- (h) that the use of the proposed building or plan is not in conformity with the Master Plan of the City framed under Section 383.

(2) Whenever the Mukhya Nagar Adhikari or the Executive Committee refuses to grant permission to erect a building or to execute any work referred to in Section 317 the reasons for such refusal shall be specifically stated in the order.

322. Special powers for suspending permission to construct buildings.—Notwithstanding anything contained in Section 321 if any street shown in the site-plan is an intended private street the Mukhya Nagar Adhikari may at his discretion refuse to grant permission to construct a building, until the street is commenced or completed.

323. Restriction of the power to sanction construction of a place of entertainment in certain cases.—Notwithstanding anything contained in this Act or any rule or bye-law made thereunder, the construction of, or any addition to, any building of public entertainment or any addition thereto, shall not, except with the previous approval of the State Government, be sanctioned by the Mukhya Nagar Adhikari or the Executive Committee, if the site of, or proposed for such building is—

(a) within a radius of one furlong from—

- (i) any residential institution attached to a recognized educational institution such as a college, high school or girls school ; or
- (ii) a public hospital with a large indoor patient ward ; or
- (iii) an orphanage containing one hundred or more inmates ; or

(b) in any thickly populated residential area which is either exclusively residential or reserved or used generally for residential as distinguished from business purposes ; or

(c) in any area reserved for residential purposes by any housing or planning scheme or otherwise under any enactment :

Provided that no permission to construct any building intended to be used for cinematograph exhibition shall be given unless the Executive Committee is satisfied that sanction to the plans and specifications have been obtained in accordance with the rules framed under the Cinematograph Act, 1918.

Commencement of Work

324. Erection of building or execution of work—How to be carried out.—Every person intending to erect a new building or to execute any work referred to in Section 317 shall erect the building or execute the work in such manner, under such supervision, through such qualified agency and subject of such conditions and restrictions as may be provided therefor by the bye-laws.

325. Inspection of Mukhya Nagar Adhikari of buildings in course of erection, alteration, etc.—The Mukhya Nagar Adhikari or any officer or servant of the Mahapalika authorised in this behalf may, at any time during the erection of the building or the execution of any work referred to in Section 317, or within three months of the completion of such building or work, make an inspection thereof and if he has reasonable ground to

suspect that in the erection of any such building or in the execution of any such work anything has been done contrary to any provisions of this Act or of any rule or bye-law framed thereunder, he may after 15 days' prior notice in writing to the person erecting such building or executing such work, cut into or lay open or pull down such portion, if any, of the building as prevents the discovery of facts sufficient to confirm or dispel the suspicion :

Provided that the person whose building or construction has been cut into or laid open shall be paid compensation by the Mukhya Nagar Adhikari for the damage caused to his building or work because of the aforesaid act, where it is found that in the erection of the building or the execution of such work nothing was done by him contrary to the provisions of this Act.

326. Enforcement of provisions concerning buildings and works.—

Where the Mukhya Nagar Adhikari at any time during the erection of the building or the execution of such work as aforesaid or at any time within three months after the completion thereof, whether as a result of his inspection or otherwise comes to know of any matter in respect of which the erection of such building or the execution of such work is in contravention of any provision of this Act or of any rule or bye-law framed thereunder, he may require the owner erecting or executing or who has erected or executed the said building or work, to cause, anything done contrary to any such provision, rule or bye-law, to be amended or to do anything which, by any such provision, rule or bye-law, may be required to be done but which has been omitted to be done.

327. Proceedings to be taken in respect of building or work commenced contrary to Act, rules or bye-laws —(1) If the erection of any building or the execution of any such work as is referred to in Section 317 is commenced or carried out contrary to the provisions of the rules or bye-laws, the Mukhya Nagar Adhikari, unless he deems it necessary to take proceedings in respect of such building or work under Section 328 shall—

- (a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Mukhya Nagar Adhikari, to show sufficient cause, why such building or work shall not be removed, altered or pulled down, or
- (b) require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Mukhya Nagar Adhikari, why such building or work shall not be removed, altered or pulled down the Mukhya Nagar Adhikari may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.

328. Power of Mukhya Nagar Adhikari to cancel permission on ground of material misrepresentation by applicant.—If at any time after permission to proceed with any building or work has been given under this Act, the Mukhya Nagar Adhikari is satisfied that such permission was

granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 316 or 317, or further information, if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.

329. Completion certificates ; permission to occupy or use.—(1) Every person shall, within one month after the completion of the erection of a building or the execution of any such work as is referred to in Section 317, deliver or send or cause to be delivered or sent to the Mukhya Nagar Adhikari at his office, notice in writing of such completion, accompanied by a certificate in the form prescribed in the bye-laws signed and subscribed in the manner so prescribed, and shall give to the Mukhya Nagar Adhikari all necessary facilities for the inspection of such building or of such work and shall apply for permission to occupy the building.

(2) No person shall occupy or permit to be occupied any such building or use or permit to be used the building or part thereof affected by any work, until—

- (a) permission has been received from the Mukhya Nagar Adhikari in this behalf, or
- (b) the Mukhya Nagar Adhikari has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission :

Provided that an application under sub-section (1) may be made and permission of the Mukhya Nagar Adhikari to occupy given in respect of part of a building also where the Mukhya Nagar Adhikari is satisfied that part has become habitable.

Dangerous Structures

330. Periodic inspection of buildings.—(1) It shall be incumbent on the owner of every building to maintain every part thereof and everything appurtenant thereto in such repair as to prevent its becoming dangerous.

(2) The Mukhya Nagar Adhikari may by written notice require the owner of any building to get the building inspected at such intervals and in such manner as may be prescribed in the bye-laws.

(3) The owner shall within two months of the inspection under sub-section (2) undertake such repairs as the inspection shall show to be necessary for the purpose of securing the stability of structure within the meaning of Section 331, after complying with all the provisions of this Act and the rules and bye-laws in regard to such repairs and shall, on completion of such repairs, submit to the Mukhya Nagar Adhikari a certificate signed by the person who made the inspection, of his having carried out the repairs satisfactorily.

(4) A report of every inspection made under sub-section (2) shall forthwith be submitted to the Mukhya Nagar Adhikari by the person who carried it out and the Mukhya Nagar Adhikari may take such action in respect of such building as he deems fit under this section or under any other provision of this Act if the owner fails to comply with the requirements of sub-section (3).

(5) The expenses incurred by the Mukhya Nagar Adhikari under sub-section (4) shall be paid by the owner.

331. Removal of structures, etc., which are in ruins or likely to fall.—(1) If it shall at any time appear to the Mukhya Nagar Adhikari that any structure (including under this expression any building, wall, parapet, pavement, floor steps, railing, door or window frames or shutters or roof, or other structure and anything affixed to or projecting from or resting on, any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Mukhya Nagar Adhikari may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair, such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.

(2) The Mukhya Nagar Adhikari may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceeding to pull down, secure, remove or repair the said structure or thing, to set up a proper and sufficient hoard or fence for the protection of passers-by and other persons, with a convenient platform and hand-rail, if there be room enough for the same and the Mukhya Nagar Adhikari shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it appears to the Mukhya Nagar Adhikari that the danger from a structure which is ruinous or about to fall is imminent he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Mukhya Nagar Adhikari under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where the Mukhya Nagar Adhikari is of opinion whether on receipt of an application or otherwise that the only or the most convenient means by which the owner or occupier of a structure such as is referred to in sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person the Mukhya Nagar Adhikari after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing, authorize the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of the Mukhya Nagar Adhikari shall be a sufficient authority to the person in whose favour it is made, or to any agent or person employed by him for this purpose, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing any work under this section as little damage as can be, shall be done to the adjoining owner's property, and the owner or occupier of premises for the benefit of which the work is done, shall—

(i) cause the work to be executed with the least practicable delay ;

(ii) pay compensation to any person who sustains damage by the execution of the said work.

332. Dangerous opening in buildings.—If it shall at any time appear to the Mukhya Nagar Adhikari that any opening in any part of a building is so situated as to constitute a danger to human life, he may, by written notice,

require that such opening shall be enclosed or protected by bars, grills or such other device to his satisfaction.

Works unlawfully carried on

333. Power of Mukhya Nagar Adhikari to direct removal of person directing unlawful work.—(1) If the Mukhya Nagar Adhikari is satisfied that the erection of any building or the execution of any such work as is referred to in Section 317 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person directing or carrying on such erection or execution to stop the same forthwith.

(2) If such erection or execution is not stopped forthwith the Mukhya Nagar Adhikari may direct that any person directing or carrying on such erection or execution shall be removed from such premises by any police officer and may cause such steps to be taken as he may consider necessary to prevent the re-entry of such person on the premises without his permission.

(3) The cost of any measures taken under sub-section (2) shall be paid by the said person.

Power to vacate Premises

334. Power of the Mukhya Nagar Adhikari to vacate any building in certain circumstances.—(1) Notwithstanding the provisions of any other law to the contrary, the Mukhya Nagar Adhikari may, by notice in writing specifying the grounds therefore, order any building or any portion thereof to be vacated forthwith or within such time as may be specified in the notice—

(a) if such building or portion thereof has been unlawfully occupied in contravention of Section 329 ;

(b) if a notice has been issued in respect of such building or part thereof requiring the alteration or reconstruction of any existing staircase, lobby, passage or landing, and the works specified in such notice have not been commenced or completed ;

(c) if the building or part thereof is in a ruinous or dangerous condition within the meaning of Section 331.

(2) The affixing of such written notice on any part of such premises shall be deemed a sufficient intimation to the occupiers of such building or portion thereof.

(3) On the issue of a notice under sub-section (1) every person in occupation of the building or portion thereof to which the notice relates shall vacate such building or portion as directed in the notice and no person shall so long as the notice is not withdrawn enter the building or portion thereof except for the purpose of carrying out any work which he may lawfully carry out.

(4) The Mukhya Nagar Adhikari may direct that any person who acts in contravention of sub-section (3) shall be removed from such building or part thereof by any police officer.

(5) The Mukhya Nagar Adhikari shall, on the application of any person who has vacated any premises in pursuance of a notice under sub-section (1), reinstate such person in the premises on the withdrawal of such notice, unless it is in his opinion impracticable to restore substantially the

same terms of occupation by reason of any structural alteration or demolition.

(6) The Mukhya Nagar Adhikari may direct the removal from the said premises by any police officer of any person who obstructs him in any action taken under sub-section (5) and may also use such force as is reasonably necessary to effect entry in the said premises.

Regulation of certain classes of buildings in particular streets or localities

335. Power to regulate future construction of certain classes of buildings in particular streets or localities.—(1) The Mukhya Nagar Adhikari may give public notice of his intention to declare subject to any valid objection that may be preferred within a period of three months :

- (a) that in any streets or portions of streets specified in such notice the elevation and construction of the frontage of all buildings or any classes of buildings thereafter erected or re-erected shall in respect of their architectural features be such as the Mahapalika may consider suitable to the locality ;
- (b) that in any localities specified in the notice there shall be allowed the construction of only detached or semi-detached buildings or both and that the land appurtenant to each such building shall be of an area not less than that specified in such notice ;
- (c) that the minimum size of building plots in particular localities shall be of a specified area ;
- (d) that in any localities specified in the notice the construction of more than a specified number of buildings on each acre of land shall not be allowed ; or
- (e) that in any streets, portions of streets or localities specified in such notice the construction of shops, warehouses, factories, huts or buildings designed for particular uses shall not be allowed, without the special permission of the Mukhya Nagar Adhikari granted in accordance with general regulations framed by the Executive Committee in this behalf and subject to the terms of such permission only.

(2) The Executive Committee shall consider all objections received within a period of three months from the publication of such notice, and shall then submit the notice with a statement of objections received and of its opinion thereon to the Mahapalika.

(3) No objection received after the said period of three months shall be considered.

(4) Within a period of two months after the receipt of the same the Mahapalika shall submit all the documents referred to in sub-section (2) with a statement of its opinion thereon to the State Government.

(5) The State Government may pass such orders with respect to such declaration as it may think fit :

Provided that such declaration shall not thereby be made applicable to any street, portion of a street or locality not specified in the notice issued under sub-section (1).

(6) The declaration as confirmed or modified by the State Government shall be published in the official *Gazette* and shall take effect from the date of such publication.

(7) No person shall erect or re-erect any building in contravention of any such declaration.

336. Power of Mukhya Nagar Adhikari in cases of contravention of provisions of Section 335.—The Mukhya Nagar Adhikari shall have power to take such action against the persons contravening the provisions of Section 335 as may be prescribed by bye-laws or rules.

337. Abandoned or unoccupied premises.—If it appears to the Mukhya Nagar Adhikari that any building or structure has been abandoned or is unoccupied and has become a resort of disorderly persons or is by reason of its condition seriously detrimental to the amenities of the neighbourhood, the Mukhya Nagar Adhikari may give a written notice to the owner of such building or structure if he is known and found to be a resident within the limits of the Mahapalika, or to any person who is known or believed to claim to be the owner, if such person is resident within the limits of the Mahapalika, and shall also affix a copy of the notice on some conspicuous part of the building or structure requiring all persons having any right or interest therein to take such order with the said building or structure as may, in the opinion of the Mukhya Nagar Adhikari, be necessary to prevent the same from being resorted to as aforesaid or from being seriously detrimental to the amenities in the neighbourhood.

338. Power to prohibit re-erection of building on inaccessible sites.—(1) If any building so situated as to be inaccessible to a fire-engine or as to cause obstruction to a fire-engine from reaching other buildings is demolished or destroyed by fire or otherwise, the Mukhya Nagar Adhikari may by a notice in writing addressed to the owner of the building demolished or destroyed as aforesaid direct that no building shall be erected which would be inaccessible to a fire-engine or which would cause obstruction to a fire-engine from reaching other buildings.

(2) No person shall erect or re-erect any building in contravention of a notice, *vide* sub-section (1).

339. Removal of building materials from any premises in certain cases.—If it appears to the Mukhya Nagar Adhikari that any stones, rafters, building materials or debris of building materials are stored or collected in or upon any premises in such quantity or bulk or in such a way as to constitute a harbourage or breeding place for rats or other vermin or is otherwise a source of danger or nuisance to the occupiers of the said premises or to persons residing in the neighbourhood thereof the Mukhya Nagar Adhikari may by a written notice require the owner of such premises, or the owner of the materials or debris so stored or collected therein, within a reasonable time to be specified in the notice, to remove or dispose of the same or to take such order with the same as may, in the opinion of the Mukhya Nagar Adhikari, be necessary or expedient to abate the nuisance or prevent a recurrence thereof.

340. Power of Mukhya Nagar Adhikari to call for statement of accommodation.—(1) The owner of a building shall, within a period of seven days of the receipt of a written notice from the Mukhya Nagar Adhikari, supply such information with respect to such building or its occupants as the Mahapalika may prescribe.

(2) The occupier of a building occupied as a separate tenement shall on like notice and within the like period supply such information as may be prescribed with respect to such building as aforesaid which is in his occupation.

341. State Government may extend provisions of Chapter outside limits of City.—The State Government may, by order which shall be published in the official *Gazette*, apply to any area to be specified in the order but not lying beyond a distance of two miles from the limits of the City, the provisions of any section in this Chapter and of rules made thereunder, subject to such adaptations whether by way of modification, addition or omission as it may deem to be necessary and expedient and thereupon the provisions and rules so applied shall have effect in that area as if it were within the City.

342. Power to make rules.—(1) The State Government may make rules to carry out the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the manner of giving permission to the erection of buildings ;
- (b) the manner of effecting repairs in and pulling down, securing and removing of dangerous buildings and recovery of expenses of such repairs, pulling down, securing or removal ;
- (c) the restrictions under which alterations may be made in the use of buildings ;
- (d) the inspection of newly constructed buildings ;
- (e) the conditions on which loans may be granted out of the Mahapalika Fund for building and the form of application for such loans.

CHAPTER XIV

Improvement Schemes

343. Types of Improvement Schemes.—For the purposes of effecting improvement in the City, an improvement scheme may be of one of the following types, or may combine any two or more of such types or special features thereof, that is to say—

- (a) a Samanya Vikas Yojana (General Improvement Scheme) ;
- (b) a Basti Sudhar Yojana (Slum Clearance and Re-building Scheme) ;
- (c) a Grih Punarnirman Yojana (Re-housing Scheme) ;
- (d) a Sarak Yojana (Street Scheme) ;
- (e) a Bhavi Sarak Yojana (Deferred Street Scheme) ;
- (f) a Grih Sthan Yojana (Housing Accommodation Scheme) ; and
- (g) a Nagar Prasar Yojana (City Expansion Scheme).

344. Samanya Vikas Yojana (General Improvement Scheme).—Whenever it appears to the Development Committee—

- (a) that any buildings in any area which are used or are intended or likely to be used as dwelling places are unfit for human habitation ; or

- (b) that danger to the health of the inhabitants of buildings in any area or in any neighbouring buildings is caused by—
 - (i) the narrowness, closeness or bad arrangement and condition of streets or buildings or groups of buildings in such area, or
 - (ii) the want of light, air, ventilation or proper conveniences in such area, or
 - (iii) any other sanitary defects in such area,

the Development Committee may pass a resolution to the effects that such an area is an insanitary area, and that a Samanya Vikas Yojana (General Improvement Scheme) be framed in respect of such area.

Comments

Analogous Law—Section 25 of the U. P. Town Improvement Act, 1919.

Exclusive jurisdiction of the Trust.—After such a resolution has been passed, objections are invited and thereafter it is sent to the State Government for sanction, it is not then open, to urge, after the scheme had been sanctioned, that the conditions under which the Board is authorised to pass a resolution, that a scheme should be framed, did not exist in that case. The language of Section 25 also suggests that the question whether such a condition exist or not lies within the exclusive jurisdiction of the Board to determine and the court cannot consider that factor, vide *Ram Dayal v. Kanpur Urban Area Distt. Board*.¹

345. Basti Sudhar Yojana (Slum Clearance and Re-building Scheme).—(1) When it appears to the Development Committee that any area is an insanitary area within the meaning of the preceding section and that, regard being had to the comparative value of the buildings in such area and of the sites on which they are erected, the most satisfactory method of dealing with the area or any part thereof is clearance of the insanitary area of existing buildings and erecting new buildings, it may by resolution direct that a Basti Sudhar Yojana (Slum Clearance and Re-building Scheme) in accordance with the provisions of this section be framed.

(2) A Basti Sudhar Yojana (Slum Clearance and Re-building Scheme) may provide for—

- (a) the reservation of streets, back lanes and open spaces and the enlargement of existing streets, back lanes and open spaces to such an extent as may be necessary for the purposes of the scheme;
- (b) the re-laying out of the sites of the area upon such streets, back lanes, or open spaces so reserved or enlarged;
- (c) the payment of compensation in respect of any such reservation or enlargement, and the construction of the streets, back lanes and open spaces so reserved or enlarged;
- (d) the demolition of the existing buildings and their appurtenances by the owners, or by the Mahapalika in default of the owners, and the erection of buildings in accordance with the scheme by the said owners or by the Mahapalika in default of owners upon the sites as defined under the scheme;

- (e) the advance to the owners, upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme, of such sums as may be necessary to assist them to erect new buildings in accordance with the scheme ;
- (f) the acquisition by the Mahapalika of any site or building comprised in the area included in the scheme :

Provided that the Mahapalika may exclude any building from demolition if it is satisfied that the particular building is not unfit for human habitation or dangerous or injurious to health or is capable of being so improved as to render it healthy and fit for human habitation and does not obstruct the clearance of the area or its re-development.

346. Grih Punarnirman Yojana (Re-housing Scheme).—The Development Committee when it resolves that an Improvement Scheme which is likely to displace persons be framed, shall also by resolution, require the Mukhya Nagar Adhikari to frame a scheme (herein called Housing Scheme) for construction, maintenance and re-management of such and so many dwellings and shops as it may consider ought to be provided for persons who—

- (a) are displaced by the execution of any improvement scheme sanctioned under this Act, or
- (b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the State Government for sanction under this Act :

Provided that the State Government may for reasons to be recorded in writing exempt a Development Committee from the liability under this section.

Comments

*Improvement Scheme in absence of Housing Scheme—Whether legal—No—*Section 346 of the Adhiniyam is mandatory in character. Under Section 346 two schemes have to be framed, one by the Development Committee of the Nagar Mahapalika and the other by the Mukhya Nagar Adhikari. The schemes are distinct. First the development resolution for the framing of a re-housing scheme and in order to give effect to that scheme the Development Committee has also to pass a resolution requiring the Mukhya Nagar Adhikari to frame another Scheme to be called the housing scheme. The two bodies which are charged under Section 346 of the Adhiniyam for the framing of the two schemes are different. The resolution requiring the Mukhya Nagar Adhikari to frame a housing scheme has to be simultaneously passed by the Development Committee when it resolves that an improvement scheme which is likely to displace persons is to be framed. The simultaneous framing of a housing scheme must be held to be included in 'all further proceedings in furtherance of such scheme i. e., re-housing scheme. Under sub-section (b), a legal fiction is created and an imaginary state of affairs is deemed to exist. The legal fiction goes further and sub-section (b) of Section 577 says that all further proceedings in furtherance of a scheme may be taken accordingly.' Another legal fiction is created by sub-section (c) of Section 577 of the Adhiniyam which is much wider in scope. It lays down that—

"all proceedings for acquisition of land whether in pursuance of any scheme or otherwise initiated under the U. P. Town Improvement Act, 1919, the Cawnpore Urban Area Development Act,

1945, or the U. P. Municipalities Act, 1916 or any other enactment applicable to the area included in the city may be continued as if they had been initiated under this Act".

There is, therefore, no possible escape from the proposition that a necessary thing, namely, framing of a housing scheme cannot be omitted once it is proposed to frame a re-housing scheme under the Adhiniyam. The Mukhya Nagar Adhikari of the Nagar Mahapalika was bound to frame a housing scheme once a re-housing scheme framed under the Act had been deemed to be continuing under the provisions of the Adhiniyam. The acquisition proceedings taken by the Nagar Mahapalika in respect of the 'Bank Road Housing Scheme', in the absence of a simultaneous housing scheme for the rehabilitation of the dehousies under Section 346 of the Adhiniyam, are, therefore, clearly illegal, vide *N. C. Upadhyay v. State of U. P.*¹

347. Sarak Yojana (Street Scheme).—(1) Whenever the Development Committee is of opinion that, for the purpose of—

- (a) providing buildings sites, or
- (b) remedying defective ventilation, or
- (c) creating new or improving existing means of communication and facilities for traffic, or
- (d) affording better facilities for conservancy,

it is expedient to lay out new streets or alter existing streets (including bridges, causeways and culverts) and that this object cannot be achieved by taking action under Chapter XII, the Development Committee may by resolution require the Mukhya Nagar Adhikari to frame a scheme to be called a "Sarak Yojana" (Street Scheme).

(2) A Sarak Yojana (Street Scheme) may within the limits of the area comprised in the scheme provide for—

- (a) the acquisition of any land which will, in the opinion of the Development Committee, be necessary for its execution ;
- (b) the re-laying out of all or any of the lands so acquired, including the construction of buildings by the Mahapalika or by any other person and the laying out, construction and alteration of streets ;
- (c) the drainage, water-supply and lighting of streets so constructed or altered ;
- (d) the raising, lowering or reclamation of any land vested in, or to be acquired by, the Mahapalika for the purposes of the scheme ;
- (e) the formation of open spaces for the better ventilation of the area comprised in the scheme ;
- (f) the acquisition of any land adjoining any street or open space included in the scheme.

348. Bhavi Sarak Yojana (Deferred Street Scheme).—(1) (a) Whenever the Development Committee is of opinion that it is expedient for any purpose mentioned in Section 347 to provide for the ultimate widening of any street by altering the existing alignment of such street to improve alignments to be prescribed by the Mukhya Nagar Adhikari but that it is not expedient immediately to acquire all or any of the properties lying within the

proposed improved alignments, the Development Committee, if satisfied of the sufficiency of the resources of the Mahapalika by a resolution require the Mukhya Nagar Adhikari to make a scheme to be called a Bhavi Sarak Yojana (Deferred Street Scheme) prescribing an alignment on each side of such street.

(b) No person shall erect, re-erect, add to, or alter any building or wall so as to make the same project beyond the prescribed alignment of the street except with the written permission of the Mahapalika.

() The Bhavi Sarak Yojana (Deferred Street Scheme) shall provide for—

(a) the acquisition of the whole or any part of any property lying within the prescribed street alignment ;

(b) the re-laying out of all or any such property including the construction and re-construction of buildings by the Mahapalika or by any other person, for the formation and alteration of the street ;

(c) the drainage and lighting of the street so formed and altered.

(3) The owner of any property included in a Bhavi Sarak Yojana (Deferred Street Scheme) may, at any time after the scheme has been sanctioned by the State Government, give the Mahapalika notice requiring it to acquire such property before the expiration of six months from the date of such notice. The Mahapalika shall thereupon issue notice of its intention to acquire such property and the property shall be acquired accordingly.

(4) Before proceeding to acquire any property within the limit to the scheme other than the property regarding which it has received a notice under sub-section (3) the Mahapalika shall give six months' notice to the owner of its intention to acquire the property.

349. Grih Sthan Yojana (Housing Accommodation Scheme).—Whenever the Development Committee is of opinion that it is expedient and for the public advantage to provide house accommodation for any class of the inhabitants of the City, it may require the Mukhya Nagar Adhikari to frame a scheme to be called a "Grih Sthan Yojana" (Housing Accommodation Scheme) for the purpose aforesaid.

350. Nagar Prasar Yojana (City Expansion Scheme).—(1) Whenever the Development Committee is of opinion that it is expedient and for the public advantage to control and provide for the future expansion of the City, it may require the Mukhya Nagar Adhikari to frame a scheme to be called "Nagar Prasar Yojana" the (City Expansion Scheme).

(2) Such scheme shall show the method in which it is proposed to lay out the area to be developed and the purposes for which particular areas are to be utilized.

(3) For the purposes of a Nagar Prasar Yojana (City Expansion Scheme) the provisions of clause (a) of sub-section (2) of Section 360 shall not be applicable but the Mahapalika shall be required to supply such details as the State Government may consider necessary.

(4) When any such scheme has been notified under Section 363, if any person desires to erect, re-erect, add to or alter any building or wall within the area comprised in the said scheme, he shall apply to the Mahapalika for permission to do so.

(5) If the Mahapalika refuses to grant permission to any person to erect, re-erect, add to or alter any building or wall on his land in the area aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

351. Framing of Scheme.—(1) Whenever as Improvement Scheme is required to be framed under any of the preceding sections, it shall be the duty of Mukhya Nagar Adhikari to prepare a draft scheme and to lay it for consideration before the Development Committee.

(2) With the previous approval of the Development Committee, the Mukhya Nagar Adhikari may, for the purpose of making an Improvement Scheme, cause surveys to be made in areas either inside or outside the limits of the area or areas comprised in the scheme to be made.

352. Combination of Improvement Schemes.—Any number of areas in respect of which improvement schemes have been or are proposed to be framed, may at any time be included in one combined scheme.

353. Matters to be provided for by Improvement Scheme.—(1) An improvement scheme may provide for all or any of the following matters as the nature of the scheme may demand :

- (a) The acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the schemes.
- (b) The re-laying out of any land comprised in the scheme.
- (c) The re-distribution of sites belonging to owners of property comprised in the scheme.
- (d) The closure or demolition of dwellings or portions of dwellings unfit for human habitation.
- (e) The demolition of obstructive buildings or portions of buildings.
- (f) The construction and re-construction of buildings.
- (g) The sale, letting, or exchange of any property comprised in the scheme.
- (h) The construction and alteration of streets and back lanes and the provision of side-walks for pedestrians.
- (i) The drainage, water-supply, and lighting of streets so constructed or altered.
- (j) The provision of open spaces for the benefit of any area comprised in the scheme or any adjoining area, and for the enlargement of existing open space and approaches.
- (k) The sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of injury or contamination to rivers or other sources and means of water-supply.
- (l) The provision of accommodation for any class of the inhabitants.
- (m) The advance of money for the purposes of the scheme.
- (n) The provision of facilities for communication.

- (o) The reclamation or reservation of land for market, gardens, afforestation, the provision of fuel and gass-supply and other needs of the population.
- (p) The provision for preventing over-crowding in the area covered by the scheme.
- (q) Any other matter for which, in the opinion of the State Government, it is expedient to make provision with a view to the improvement of any area in question or the general efficiency of the scheme.

(2) The Mahapalika may from time to time lay down by resolution what shall constitute over-crowding for the purpose of this section and may in such resolution specify the minimum space to be allowed for each person according to age in premises used exclusively as a dwelling and in premises used as a dwelling as well as for some other purpose.

354. Inclusion of areas outside City in certain Improvement Schemes.—An Improvement Scheme mentioned in clause (a) or (b) or (g) of Section 343 may include within it in whole or in part any such area lying within two miles outside the limits of the City as the State Government may by notification in the official *Gazette* specify and such area shall, for the purposes of this Chapter, be deemed to be area lying within the City.

355. Matters to be considered when framing Improvement Schemes.—When framing an improvement scheme in respect of any area, regard shall be had to—

- (a) the nature and the conditions of neighbouring areas and of the City as a whole ;
- (b) the several directions in which the expansion of the City appears likely to take place ; and
- (c) the likelihood of improvement schemes being required for other parts of the City.

356. Consideration by Development Committee.—(1) The Development Committee shall consider the scheme placed before it by the Mukhya Nagar Adhikari and accept it with or without modifications or require the Mukhya Nagar Adhikari to make alterations in it and to re-submit it for consideration.

(2) The Development Committee shall record in writing its acceptance of the scheme and direct that the scheme be notified.

357. Notice of Improvement Scheme.—(1) Upon the approval of the draft improvement scheme by the Development Committee the Mukhya Nagar Adhikari shall prepare a notice stating—

- (a) the fact that the scheme has been framed,
- (b) the boundaries of the area comprised in the scheme, and
- (c) the place at which particulars of the scheme, a map of the area comprised in the scheme and a statement of the land which is proposed to acquire may be seen.

(2) The Mukhya Nagar Adhikari shall cause the said notice to be published for three consecutive weeks in the official *Gazette* and the Bulletin of the

Mahapalika, if any, and also in one or more local newspaper or newspapers as the Mukhya Nagar Adhikari thinks fit, with a statement of the period within which objections will be received. A copy of the notice shall be sent to the President of the Cantonment Board if there is a Cantonment adjoining the City.

(3) The Mukhya Nagar Adhikari shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed.

Comments

Analogous Law—Section 36 of the U. P. Town Improvement Act, 1919.

After sanction of the Scheme by State Government.—Cannot be abandoned—See Head note "No abandonment after sanction" in Section 364 of this Act.

Period for carrying out a scheme—In *Ram Dayal v. Kanpur Urban Area D. Board*¹ it was held in a similar provision that there is no limitation prescribed in the Act for carrying out a particular scheme.

Point when execution of scheme starts—Execution of scheme does not start at any time before it is sanctioned and as soon as it is sanctioned it is capable of execution and the land acquisition proceedings are nothing but steps towards completion of execution *vide Ram Dayal's*¹ case.

Compensation—Can be claimed by a transferee—Yes—A perusal of Sections 36 and 42 Land Acquisition Act, indicates that there is no prohibition of transfer of his interest by the owner of property in favour of any person under any of these sections nor do they contain any restriction on the right of transfer possessed by the owner. Further Section 40 of that Act would indicate that even after the publication of a notice under Section 36 of that Act it is open to the acquiring authority to abandon the scheme. Section 56 and 58 of that Act show that the provisions of the land acquisition Act (Act I of 1894) apply to the proceeding under the Act as modified by the schedule applied thereto.

Under Section 16 of the Land Acquisition Act which would apply to the present case by virtue of the above provisions, the land would vest in the acquiring authority only after the collector has taken possession of the same after making an award. Till that stage, therefore, the title in the property remains in the owner of the property and he can transfer it or create any interest in it. The transferee or the person in whose favour the interest is created is, therefore, not barred from claiming compensation merely on the ground that his interests was created subsequent to the date of notification, *vide Union Sugar Mills Co. v. U. P. Government*.²

358. Notice of proposed acquisition of land.—(1) During the thirty days next following the first day on which any notice is published under Section 357 in respect of any improvement scheme, the Mukhya Nagar Adhikari shall serve a notice on—

- (a) every person whose name appears in the Mahapalika assessment list as being primarily liable to pay any tax assessed upon the annual value of any building or land which it is proposed to acquire in executing the scheme, and

1. 1956 A. L. J. 595.

2. A. I. R. 1958 Alld. 526 (527) (D. B.) : 1958 A. L. J. 246 : 1958 A. W. R. 323.

- (b) the occupier (who need not be named) of each premises, entered in the Mahapalika assessment list which the Mahapalika proposes to acquire in executing the scheme.

(2) Such notice shall—

- (a) state that the Mahapalika proposes to acquire such land for the purposes of carrying out an improvement scheme, and
- (b) require such person, if he dissents from such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

359. Consideration of the Scheme by the Mahapalika.—After the expiry of the periods respectively prescribed under Sections 357 and 358 in respect of any improvement scheme, the Development Committee shall consider any objection or representation received thereunder and after hearing all persons making any such objection or representation who may desire to be heard, and after inserting in the scheme such modifications, if any, as it thinks fit, submit to the Mahapalika the scheme together with any objection or representation with its recommendation either that the scheme be abandoned or sanctioned.

360. Abandonment or sanction of scheme by Mahapalika.—(1) The Mahapalika shall on receipt of scheme from the Development Committee proceed to take such scheme into consideration together with any objection or representation received or made under Sections 357 and 358 and the recommendation of the Development Committee under Section 359 and shall either abandon the scheme or sanction the scheme with such modifications, if any, as it may consider necessary :

Provided that in the case of a scheme of the estimated cost of over Rs. 10,00,000 the sanction of the State Government shall also be obtained.

(2) Every scheme submitted to the State Government under proviso to sub-section (1) shall contain the following :

- (a) a description of, and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme ;
- (b) a statement of the reasons for any modifications made in the scheme as originally framed ;
- (c) a statement of objections (if any), received under Section 357 ;
- (d) a list of names of all persons (if any), who have dissented, under clause (b) of sub-section (2) of Section 358 from the proposed acquisition of their land and a statement of the reasons given for such dissent, and
- (e) a statement of the arrangements made or proposed by the Mahapalika for the re-housing of persons likely to be displaced by the execution of the scheme, for whose re-housing provision is required.

(3) When a scheme has been submitted to the State Government under the proviso to sub-section (1), the Mukhya Nagar Adhikari shall cause notice of the fact to be published for two consecutive weeks in the official Gazette and in the Bulletin of the Mahapalika, if any, and in the manner provided in Section 357.

(4) If the Mahapalika declines to approve the scheme the Mukhya Nagar Adhikari shall forthwith draw up and publish in the manner provided in Section 357 a notice stating that the Mahapalika has resolved not to proceed with the making of the scheme, and on such publication the notification relating to the scheme published under Section 357 shall be deemed to be cancelled.

361. State Government's power in respect of the scheme.—(1) The State Government may sanction either with or without modification, or may refuse to sanction, or may return for reconsideration, any improvement scheme submitted to it under Section 360.

(2) If a scheme returned for reconsideration under sub-section (1) is modified by the Mahapalika, it shall be re-published in accordance with Section 357—

- (a) in every case in which the modification affect the boundaries of the area comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired, and
- (b) in every other case, unless the modification is, in the opinion of the State Government, not of sufficient importance to require re-publication.

362. Procedure on a scheme being modified by the Mahapalika.—The provisions of Section 357 shall apply *mutatis mutandis* to any scheme that the Mahapalika on its own authority is entitled to sanction, if after the consideration of objections and representations under Section 360 any modification in the original scheme is made which gives rise to the condition mentioned in sub-section (2) of Section 361.

363. Notification of sanction of Improvement Scheme.—Whenever a scheme is sanctioned whether by the Mahapalika on its own authority or with the sanction of the State Government under the proviso to sub-section (1) of Section 360, the fact shall be announced by notification in the official *Gazette* and it shall be incumbent on the Mahapalika, when it sanctions the scheme under its own authority, immediately to inform the State Government and to submit for the information of the State Government the details required by sub section (2) of Section 360.

Comments

Analogous Law.—Section 42 of the U. P. Town Improvement Act.

Scheme—Whether can be completed afterwards if not forthwith—Yes.—In a case under the analogous provisions it was held that there is nothing in Section 42 of that Act from which it could be argued that if the scheme is not executed forthwith, no steps can be taken to execute it afterwards, vide *Ram Dayal v. Kanpur Urban Area D. Board*¹.

Publication of the Scheme—Mandatory.—Publication under that provision is a real and essential requirement intended to apprise the public that compulsory acquisition of one's property for another jurisdic entity is one made in public interest and on terms beneficial to it. The publication is not a formality, and its omission will affect the acquisition, vide *P. Iyar Nadar v. State*².

1. 1956 A. L. J. 595.

2. A. I. R. 1965 Madras 50(51) (D. B.).

364. Alteration of Improvement Scheme after sanction.—At any time after an improvement scheme has been sanctioned by the State Government or by the Mahapalika on its own authority and before it has been completed, the Mahapalika may alter it :

Provided that—

- (a) in the case of a scheme sanctioned by the State Government if any alteration is estimated to increase the estimated net cost of executing the scheme by more than rupees one lac, such alteration shall not be made without the previous sanction of the State Government,
- (b) in the case of a scheme sanctioned by the Mahapalika on its own authority the alteration shall be sent to the State Government for information,
- (c) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the State Government, the procedure prescribed in the foregoing sections of this Chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

Comments

No abandonment after sanction.—This section provides for alteration in a scheme after sanction by the State Government but there is no power with Mahapalika for abandonment after such sanction as there is no such provision although it can be abandoned before such sanction as provided in Section 360 of this Act. In a similar provision under Section 36 of the U. P. Town Improvement Act the High Court of Allahabad held so in *Ram Dayal v. Kanpur Urban Area D. Board.*¹

Proceedings completely dropped—Cannot be revived.—In a subsequent case (*N. C. Upadhyaya v. State of U. P.*)² the aforesaid case of *Ram Dayal*¹ was distinguished. It was held that in that case due to the war and the shortage of housing accommodation it was not possible for the trust to construct quarters for the residents of the locality involved and, therefore, further operation of the scheme remained in abeyance. In the instant case, however, the same scheme was completely dropped, i. e. it was killed. A thing which is dead cannot be revived. No provision has been shown to me either in the Act or in the Adhiniyam by which the scheme could be revived. Had the scheme been put into cold storage, for the time being, it could undoubtedly be revived but in the present case the scheme was completely dropped and therefore the scheme could not be revived.

365. Acquisition of land acquired for improvement Scheme.—

(1) Upon the sanction of an improvement scheme by [under this Chapter]³ the Mukhya Nagar Adhikari may enter into an agreement with any person for the purchase, leasing on exchange by the Mahapalika from such person of any land which the Mahapalika is authorized to acquire for an improvement scheme or any interest in such land.

(2) The Mahapalika may for the purposes of an improvement scheme sanctioned [under this chapter]³ acquire land or interest in land under the

1. 1956 A. L. J. 595.

2. A. I. R. 1965 All. 356 (365).

3. Subs. by U. P. Act XXI of 1964.

provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Chapter.

(3) The Mukhya Nagar Adhikari may for the purposes of an improvement scheme exercise any of the powers conferred upon him under sub-section (2) of Section 273 and Section 290.

(4) All acquisition of land and interest in land for an improvement scheme authorised under this Chapter shall be completed at least up to the stage of making of awards within a period of five years from the date of the notification of the scheme under Section 363 and any land in respect of which the acquisition is not so completed and the owner and occupier thereof shall cease to be subject to any liabilities under this Chapter :

Provided that the State Government may in any particular case before the expiry of such period and for reasons to be recorded in writing extend the period by one year :

¹[Provided further that in relation to any improvement scheme notified under Section 42 of the U. P. Town Improvement Act, 1919, or Section 60 of the Cawnpore Urban Area Development Act, 1945, this sub-section shall be so construed as if for the words 'within a period of five years from the date of the notification of the scheme under Section 363' the words 'on or before the thirty-first day of December, 1967' were substituted.]

Comments

Scope of this section—(As stood before Amendment in 1964)—See *Mohd. Amir v. Nagar Mahapalika, Lucknow*.²

Period of 5 years—*Whether can be extended by a general order*—No, but by a special order only—The proviso to sub-section (4) of Section 365 of the Adhiniyam requires that the State Government may extend the period of five year in any particular case before the expiry of such period, after recording its reasons in writing. It is, therefore, clear that the State Government has to issue an individual order extending the period of five years in respect of each scheme and it cannot extend the period in case of all schemes by all the Nagar Mahapalikas of the State by a general order. The proviso to sub-section (4) of Section 365 of the Adhiniyam speaks of 'any particular case.' It does not contemplate the extension of the period of five years by the State Government by a general order ; vide *N. C. Upadhyaya v. State of U. P.*³

366. Restrictions against building, etc.—When a notice has been published under Section 357 in respect of a slum clearance and re-building scheme, no person shall erect, re-erect, add to or alter any building or otherwise develop any land comprised in the insanitary and re-building area except in accordance with the re-building plan for the area covered by the scheme and subject to such restrictions and conditions as the Mukhya Nagar Adhikari may think fit to impose :

Provided that an owner who is aggrieved by a restriction or condition so imposed on the use of his land, or by a subsequent refusal of the Mukhya Nagar Adhikari to cancel or modify any such restriction or condition, may within thirty days appeal to the Judge. The Judge shall make such order in the matter as he thinks proper, and the decision of the Judge shall be final.

1. Ins. by U. P. Act XXI of 1964.

2. A. I. R. 1965 Alld. 599 (604).

3. A. I. R. 1965 Alld. 356 (365).

Comments

Scope—This provision does not confer on the Mahapalika the right nor does it provide the procedure under which land or property can be acquired in order to implement a scheme. It only provides for the provisions of the Land Acquisition Act being read modified by the context of this Adhiniyam. It is obvious that in the Land Acquisition Act many words have been used which cannot apply to a Mahapalika and it is in order to harmonize the two that the provisions of Section 366 have been enacted. See *Mohd. Amir v. Nagar Mahapalika, Lucknow*.¹

367. Clearance orders.—The Mukhya Nagar Adhikari with the sanction of the Development Committee may at any time after the notification of sanction has been published under Section 363 require the occupiers of any building or buildings comprised in the insanitary area to be vacated for purposes of demolition within three months of the notice; and require the owner or owners of such building or buildings to demolish the same within a further period of one month and if the building is not demolished before the expiration of that period the Mukhya Nagar Adhikari shall take measures to demolish the building or buildings at the risk and cost of the owner, sell materials thereof and clear the site :

Provided that the vacation and demolition of buildings may proceed simultaneously.

²[367-A. **Abandonment of Scheme.**—The Mahapalika may at any time with the prior approval of, and in accordance with such conditions as may be imposed by the State Government, abandon any scheme notified under Section 42 of the U. P. Town Improvement Act, 1919, Section 60 of the Cawnpore Urban Area Development Act, 1945 or Section 363 of this Act, and upon such abandonment, any land in respect of which the acquisition is not complete up to the stage of making of award, and the owner and occupier of such land, shall cease to be subject to any liabilities under this Chapter.]

368. Power to dispose of land.—Subject to the rules made under this Act the Mahapalika may retain, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Chapter :

Provided that in leasing, selling, exchanging or otherwise disposing of land acquired for any scheme under this Chapter preference to such extent and in such manner as may be prescribed shall be given to the persons whose land was acquired for such schemes.

369. Power to make surveys.—The Mukhya Nagar Adhikari may cause a survey of any land to be made whenever it considers that a survey is necessary for carrying out any of the purposes of this Chapter.

370. Power of entry.—(1) The Mukhya Nagar Adhikari may, subject to the provisions of Section 562 with or without assistants or workmen, enter into or upon any land, in order—

- (a) to make any inspection, survey, measurement, valuation or inquiry,
- (b) to take levels,
- (c) to dig or bore into the sub-soil,

1. A. I. R. 1965 All. 599 (605).

2. Ins. by U. P. Act XXI of 1964.

- (d) to set out boundaries and intended lines of work,
- (e) to make such levels, boundaries and lines by marks and cutting trenches, or
- (f) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Chapter, any rule or bye-law made, or scheme sanctioned under this Chapter.

(2) Whenever the Mukhya Nagar Adhikari enters into or upon any land in pursuance of sub-section (1), the Mahapalika shall pay for any damage that may be caused.

(3) The Mukhya Nagar Adhikari may make an entry for the purpose of inspection or search and may open or cause to be opened a door, gate or other barrier—

- (a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and
- (b) if the owner or occupier is absent, or being present refuses to open such door or gate or barrier.

371. Tribunal to be constituted.—(1) A Tribunal shall be constituted for the City by the State Government with powers and duties specified hereinafter.

(2) The Tribunal constituted under Section 57 of the United Provinces Town Improvement Act, 1919, or the Cawnpore Urban Area Development Act, 1945, as the case may be, shall from the appointed day be dissolved.

(3) All suits and proceedings pending before the Tribunal constituted under the United Provinces Town Improvement Act, 1919, or the Cawnpore Urban Area Development Act, 1945, as the case may be, shall be tried and proceeded with by the Tribunal constituted under sub-section (1) as if they had been filed before such Tribunal and the provisions of this Act and any rules made thereunder shall apply to all such suits and proceedings.

372. Duties of Tribunal.—¹[(1)] The Tribunal shall perform the functions of the Court with reference to all acquisition of land for the Mahapalika for the purposes of this Act under the Land Acquisition Act, 1894 :

Provided that no such claim shall be entertained by the Tribunal, unless the claimant has deposited in Court such sum, not exceeding Rs. 7,000, as the Tribunal may fix, as security, for the costs, which in the event of the claimant's failure may be awarded against him.

¹[(2) The Tribunal shall also perform the functions referred to in Chapter VII of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, as applicable to Mahapalika premises under Section 129-A.]

373. Personnel of Tribunal.—(1) The Tribunal shall consist of a Chairman and two assessors.

(2) The Chairman shall be a Civil Judicial Officer not below the rank of a District Judge :

1. Re-numbered as sub-section (1) and sub-section (2) inserted by U. P. Act No. 30 of 1970.

Provided that no person shall be eligible for appointment as an assessor of the Tribunal if he is a member of the Mahapalika or would, if he were a member, be liable to removal under Section 83.

(3) The Chairman of the Tribunal and the assessors shall be appointed by the State Government.

(4) The term of office of the Chairman shall be for such period as the State Government may from time to time appoint in this behalf and the term of office of each assessor shall be for a period not exceeding three years :

Provided that no assessor, who has become liable to the proviso to subsection (2) shall be eligible for re-appointment.

(5) The State Government may remove the Chairman or an assessor from the Tribunal on the ground of incapacity or misbehaviour or for any other reason that the State Government considers sufficient.

(6) If the Chairman or an assessor of the Tribunal is absent for three months or more on account of illness or any other cause, the State Government shall appoint another person in his place.

374. Remuneration.—The Chairman and each assessor of the Tribunal shall be paid from the Mahapalika such fixed remuneration, if any, as the State Government may prescribe.

375. Staff of Tribunal.—(1) The Chairman of the Tribunal shall from time to time prepare a statement showing—

(a) the number and grades of the members of the staff necessary for the Tribunal,

(b) the salary to be paid to each member of the staff.

(2) The terms and conditions of service of the members of the staff of the Tribunal shall be determined by the Chairman with the previous approval of the State Government.

376. Modification of the Land Acquisition Act, 1894.—For the purpose of the acquisition of land for the Mahapalika under the Land Acquisition Act, 1894—whether under this Chapter or any other Chapter of this Act—

(a) the said Act shall be subject to the modifications specified in the Schedule to this Act ;

(b) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894.

Comments

Modifications specified in the Schedule—See Schedule II in this Adhiniyam.

377. Law applicable to the Tribunal.—In so far as they are not inconsistent with the provisions of this Act the provisions of the Code of Civil Procedure, 1908, and the Indian Evidence Act, 1872, shall apply to all proceedings before the Tribunal.

378. Power of Chairman.—In the hearing and decision of disputes under this Chapter—

- (a) if there is any disagreement between the Chairman and the assessors of the Tribunal on a point of fact, the opinion of the majority shall prevail, and
- (b) if there is any disagreement between the Chairman and the assessors of the Tribunal on a point of law or procedure, the assessors shall be bound by the opinion of the Chairman.

379. Decision of the Tribunal to be final.—Subject to the provisions of Section 381 the decision of the Tribunal shall be final, and shall not be questioned in any Court of law.

380. Enforcement of orders of the Tribunal.—Every order made by the Tribunal for the payment of money shall be enforced, on application, by the Court of Small Causes of the City, as if it were a decree of that Court.

381. Appeals.—(1) An appeal to the High Court shall lie from a decision of the Tribunal, if—

- (a) the Chairman of the Tribunal grants a certificate that the case is a fit one for appeal, or
- (b) the High Court grants special leave to appeal, provided that the High Court shall not grant such special leave unless the Chairman of Tribunal has refused to grant a certificate under Clause (a).

(2) An appeal under sub-section (1) shall lie only on one or more of the following grounds, namely—

- (a) the decision being contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ;
- (c) a substantial error or defect which may have produced an error or defect in the decision of the case upon merits either on a point of fact or of law.

(3) Notwithstanding anything contained in the foregoing provisions, no appeal shall lie under this section unless the appellant has deposited the money which he is liable to pay under the order from which the appeal is filed.

(4) Subject to the provisions of sub-section (1), the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees, shall, so far as may be, apply to appeals under this Act.

(5) An appeal under sub-section (1) shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Indian Limitation Act, 1908.¹

(6) An order passed by the High Court on appeal under this Act shall be enforced, on application, by the Court of Small Causes of the City, as if it were a decree of that Court.

1. Now see Limitation Act, 1963.

Comments

Decision—Whether ‘Order’ or ‘Award’—The word ‘decision’ is not a word of Art. It is a word having broad connotation. It may include a decree or an order within the meaning of the provisions of the Code of Civil Procedure ; it may also include an award in some cases. In some cases it may include neither of them. Whether it includes any one of them in sub-section (1) of Section 381 will depend not merely upon that expression, but upon its collocation. It may be observed that in sub-section (3) of Section 331 itself the Legislature has said that no appeal shall lie under Section 331 unless the appellant has deposited the money which he is liable to pay under the order from which the appeal is filed. It thus seems that sub-section (3) will apply to a case where the Mahapalika who is called upon to pay certain compensation, proposes to file an appeal in the High Court. In that event the Nagar Mahapalika would have to deposit the amount of compensation awarded by the Tribunal. The decision of the Tribunal for payment of compensation by the Nagar Mahapalika to a particular person is called an order by the Legislature in sub-section (3) of Section 331. Sub-section (3), therefore, shows that it is necessary to examine the context of sub-section (1) of Section 381 in order to find out whether the word ‘decision’ in that provision means a decree or an order or an award or none of them. Clause (b) of Section 376 provides that the award of the Tribunal shall be deemed to be the award of the court under the Land Acquisition Act. It would thus appear that in this provision the Legislature has characterised the decision of the Tribunal as an award of the Tribunal. It has gone on to say that its award shall be deemed to be the award of the Court under the Land Acquisition Act. In view of this provision the decision of the Tribunal is an award.

This inference is supported by sub-section (4) of Section 365. Sub-Section (4) provides that all acquisition of land for an improvement scheme shall be completed at least up to the stage of making of award within the period of five years from the date of the notification of the scheme. Sub-section (4) thus contemplates the giving of an award by an appropriate authority in respect of compensation. After that award has been given, it may be open to a person aggrieved with the amount awarded to him to take the dispute to the Tribunal constituted under the Act. Speaking in the popular way the Tribunal sits in judgment over the award given by the appropriate authority. It is, therefore, reasonable to assume that the decision of the Tribunal would also be an award. In view of the provisions of Section 577 (a), (b) and (c), the proceedings for acquisition of land in pursuance of a scheme of improvement under the Town Improvement Act or any other Act applicable to the area included to the City shall be deemed to be proceedings initiated under the Act. In view of Section 577 the proceedings for the acquisition of land for Raja Ki Mandi Street scheme although initiated under the Town Improvement Trust Act and the Land Acquisition Act shall be deemed to be proceedings initiated under the Act. Accordingly it shall be deemed that the land was being acquired for the Mahapalika under Section 376. Consequently the decision of the Tribunal shall be an award, vide *Aijazuddin v. Taxing Officer, High Court*.¹

Appeal against award—Court fee—Section 8 of the Court fees Act *inter alia* provides that the amount of fee payable under that Act on a memorandum of appeal against an award made by a Tribunal constituted under the United Provinces Town Improvement Act or any other similar statute shall be computed according to the difference between the amount awarded and

1. A. I. R. 1966 All. 227 (230).

the amount claimed by the appellant. The Nagar Mahapalika Act will be comprehended within the expression 'any other similar statute' in Section 8. It is part material with the provisions of United Provinces Town Improvement Act. Accordingly Section 8 squarely applies and the Court fees has got to be levied in accordance with this provision. As Section 8 applies, it is not necessary to consider whether Art. 11 of Schedule II would on its terms apply for if Section 8 applies. Article 11 is necessarily excluded from the field, vide *Aijazuddin v. Taxing Officer, High Court*.¹

382. Preservation of trees and woodland.—(1) If it appears to the Development Committee that it is expedient in the interest of amenity to make provision for the preservation of any trees or woodlands in the City it may authorize the Mukhya Nagar Adhikari to make an order—

- (a) prohibiting, except with his permission, the cutting down, topping, lopping or wilful destruction of any tree or group of trees to be specified in the order ;
- (b) securing the replanting in such a manner as may be specified in the order of any part of a woodland of which trees have been felled in the course of forestry operations whether with or without the permission of the Mukhya Nagar Adhikari.

(2) Any person aggrieved by an order of the Mukhya Nagar Adhikari under sub-section (1) may appeal to the State Government within 30 days from the service of the order upon him and the State Government may confirm any such order without modification or subject to such modification as it considers fit or revoke the order.

383. Master Plan for the City.—(1) A Mahapalika may, and if so required by the State Government shall, prepare in the manner and subject to the conditions prescribed by rules made in this behalf a Master Plan for the City.

Explanation. — In this section "Master Plan" means a comprehensive plan showing therein the existing and proposed location and general layout of—

- (a) arterial streets and transportation lines ;
- (b) residential sections ;
- (c) business areas ;
- (d) industrial area ;
- (e) educational institutions ;
- (f) public parks, play-grounds and other recreational facilities ;
- (g) public and semi-public buildings ;
- (h) other land uses which are necessary.

(2) A Master Plan shall be revised at the end of every 10 years and may be revised earlier if the Mahapalika so thinks fit.

(3) Notwithstanding anything in this Act, the improvement schemes and the layout of new streets, drains, parks, factories and buildings shall, as far as may be, be in conformity with the Master Plan :

1. A. I. R. 1966 All. 227 (230)

Provided that nothing in this section shall apply to the improvement schemes already sanctioned under the U. P. Town Improvement Act, 1919, or the U. P. Cawnpore Urban Area Development Act, 1941.

384. Power to make rules.—(1) The State Government may make rules to carry out the purposes of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the conduct of the business of the Tribunal, not being rules repugnant to the Code of Civil Procedure ;
- (b) the manner of giving of public and personal notices in respect of improvement schemes ;
- (c) submission by Mahapalika to the State Government progress reports about improvement schemes ;
- (d) all matters relating to the preparation and revision of Master Plan for the City ;
- (e) regulation of changes in land uses.

CHAPTER XV

Sanitary Provisions

Scavenging and Cleansing

385. Mukhya Nagar Adhikari to provide for cleansing of streets and removal of refuse.—For the purpose of securing the efficient scavenging and cleansing of all streets and premises the Mukhya Nagar Adhikari shall—

- (1) provide for the surface cleansing of all streets in the City and removal of the sweeping therefrom ;
- (2) provide or appoint in proper and convenient situations, public receptacles, depots and places for the temporary deposit of—
 - (a) dust, ashes, refuse and rubbish ;
 - (b) trade refuse ;
 - (c) carcasses of dead animals ;
 - (d) excrementitious and polluted matters ;
- (3) provide for the removal of the contents of all receptacles and deposits and of the accumulations at all places provided or appointed by him under the provisions of this Act for the temporary deposit of dust, ashes, refuse, rubbish, trade refuse, carcasses of dead animals and excrementitious and polluted matter :

Provided that the final disposal of the matters referred to in clauses (a) to (d) of sub-section (2) shall be subject to any general or special directions of the Mahapalika or the State Government.

386. Regulation of the disposal of rubbish, etc., removed through private agency.—(1) The Mukhya Nagar Adhikari may, with the previous sanction of the Executive Committee by public notice to be given in the manner prescribed by rule, issue directions as to the time, manner and conditions etc., in and subject to which any matters specified in sub-section (2)

of, Section 385 may be removed along a street, deposited or otherwise disposed of.

(2) Without prejudice to the generality of the foregoing power, a direction issued under sub-section (1) may require that all matters specified in sub-section (2) of Section 385 collected by scavengers by private scavenging shall be deposited in the public receptacles, depots, and places provided or appointed under the said sub-section.

(3) Where any direction has been issued under sub-section (1), no person shall remove along a street, deposit or otherwise dispose of any matters specified in sub-section (2) of Section 385 in contravention of such direction.

387. Refuse, etc., to be the property of the Mahapalika.—All matters deposited in public receptacles, depots and places provided or appointed under Section 385 and all matters collected by Mahapalika servants or contractors in pursuance of that section and Section 386 shall be the property of the Mahapalika.

Comments

Scope—Manure as such may not belong to the Mahapalika but where it is obtained by conversion of night soil used to be collected by the municipal sweepers from latrines or private houses and deposited at some convenient place must be held to belong to the Nagar Mahapalika. To this effect is the present Section 387 of this Adhiniyam. See *Municipal Board, Meerut v. Bir Singh*¹.

388. Provision may be made by Mukhya Nagar Adhikari for collection, etc., of excrementitious and polluted matter.—(1) The Mukhya Nagar Adhikari may give public notice of his intention to provide, in such portion of the City as he may specify, for the collection, removal and disposal by Mahapalika agency, of all excrementitious and polluted matter from privies, urinals, and cess-pools, and thereupon it shall be the duty of the Mukhya Nagar Adhikari to take measures for the daily collection, removal and disposal of such matter from all premises situated in such portion of the City.

(2) In any such portion as is mentioned in sub-section (1) and in any premises, wherever situated, in which there is a water closet or privy connected with a Mahapalika drain, it shall not be lawful, except with the written permission of the Mukhya Nagar Adhikari, for any person who is not employed by or on behalf of the Mukhya Nagar Adhikari to discharge any of the duties of scavengers.

389. Special sanitary arrangements at certain places.—(1) The Mukhya Nagar Adhikari may make such special arrangements, as he considers adequate for maintaining sanitation in the vicinity of any temple, Math, Mosque, tomb or any place of religious worship or instruction or entertainment to which large numbers of persons resort on particular occasions or in any place which is used for holding fairs, festivals or other public gatherings.

(2) The Mukhya Nagar Adhikari may require any person having control over any such place as aforesaid to pay the Mahapalika such contribution towards the cost of the special measures taken under sub-section (1) as the Executive Committee may from time to time fix, and such person shall be bound to pay the same out of the funds relating to such place.

1. 1965 Alld. 527 (529) (D. B.).

Inspection and Sanitary Regulation of Premises

390. Power to inspect premises for sanitary purpose.—(1) The Mukhya Nagar Adhikari may inspect any building or other premises for the purposes of ascertaining the sanitary condition thereof.

(2) If it shall appear to the Mukhya Nagar Adhikari necessary for sanitary reasons so to do, he may, by written notice, require the owner or occupier of any building to cause the same or any portion thereof to be lime-washed, disinfected or otherwise cleansed.

391. Building or rooms in buildings unfit for human habitation.—(1) If the Mukhya Nagar Adhikari is of the opinion that any building or portion of a building intended for or used as a dwelling is unfit for human habitation, he may, with the previous approval of the Executive Committee and, unless there is in his opinion imminent danger to the occupier, after the owner or occupier of such building has been given an opportunity in the manner prescribed to show cause, by order in writing prohibit the use of such building or portion as a dwelling till such time as the same has been rendered fit for habitation

Explanation.—The expression “unfit for human habitation” in this section means unfit for human habitation by reason of sanitary defects, that is, lack of air space or ventilation, darkness, dampness, absence of adequate and readily accessible water-supply or sanitary accommodation or of other convenience and inadequate drainage of courtyard or passages.

(2) Where any order as is referred to in sub-section (1) has been made the owner or occupier of the building shall not use or suffer the same to be used for human habitation until the Mukhya Nagar Adhikari certifies that the same has been rendered fit.

(3) Where the Mukhya Nagar Adhikari has made any order under sub-section (1) he shall give written instructions to the owner or occupier as to what modifications or alterations are required to be made for rendering such building or portion of building fit for human habitation.

(4) The Mukhya Nagar Adhikari may cause any person using any building or room in contravention of sub-section (1) to be removed from such building or portion by any police officer or Mahapalika servant.

(5) The provisions of sub-sections (5) and (6) of Section 334 shall apply on the issue by the Mukhya Nagar Adhikari if a certificate that the building or portion of building, as the case may be, has been rendered fit for habitation as if such certificate were the withdrawal of notice issued under sub-section (1) of the said section.

Comments

Demolition orders.—Section 391 to 395—In respect of buildings or rooms in buildings unfit for human habitation.

Section 315 to 329—Other erections, alterations, repairs, etc. in building.

Section 326—Enforcement of provisions concerning buildings and works.

Section 327—Proceedings to be taken in respect of buildings or works commenced contrary to Act, Rules or Bye-Laws.

Section 395—Appeal against such demolition orders.

392. Power to require repairs of insanitary buildings.—(1) If it shall appear to the Mukhya Nagar Adhikari that any building intended for or used as a dwelling is in any respect unfit for human habitation the Mukhya Nagar Adhikari may, by written notice, require the owner of the building to show cause why an order be not made to execute such works or carry out such alterations as would render the building fit for human habitation.

(2) In addition to serving a notice under this section on the owner of the building the Mukhya Nagar Adhikari may serve a copy of the notice on any other person having an interest in the building or in the land on which such building has been erected, whether as mortgagee, lessee or otherwise.

(3) If the owner and any person referred to in sub-section (2) fail to file any objection or the Mukhya Nagar Adhikari upon hearing of any objections filed is satisfied that the execution of works or carrying out of alteration is necessary to render the building fit for human habitation he shall by written notice require the owner of the building within a reasonable time, not being less than 21 days as may be specified in the notice, to execute such works or carry out such alterations.

(4) Where it appears to the Mukhya Nagar Adhikari that immediate action is necessary for the purpose of preventing imminent danger to any person or property by the continuance of a dwelling in a state unfit for human habitation, he may dispense with the issue of a notice under sub-section (1) and forthwith issue the notice referred to in sub-section (3) and serve a copy thereof on any other person referred to sub-section (2).

393. Power to order demolition of insanitary buildings.—(1) If it shall appear to the Mukhya Nagar Adhikari that any building intended for or used as a dwelling is unfit for human habitation and is not capable at a reasonable expense of being rendered, so fitted he shall serve upon the occupier of the building and the owner thereof a notice stating the date, not being less than twenty-one days after the service of the notice, and place at which the condition of the building and any offer with respect to the carrying out of works or the future use of the building will be considered by the Executive Committee, and every person upon whom such notice is served shall be entitled to be heard when the matter is so taken into consideration.

(2) A person upon whom notice is served under sub-section (1) shall, if he intends to submit an offer with respect to the carrying out of works, within twenty-one days from the date of the service of the notice upon him, serve upon the Mukhya Nagar Adhikari notice in writing of his intention to make the offer and shall, within such reasonable period as the Mukhya Nagar Adhikari may allow submit to him a list of the works which he offers to carry out.

(3) The Mukhya Nagar Adhikari may, with the previous approval of the Executive Committee, accept from any owner or any other person interested, an undertaking either that he will within a specified period carry out such works as will in the opinion of the Mukhya Nagar Adhikari render the building fit for human habitation, or that it shall not be used for human habitation until the Mukhya Nagar Adhikari on being satisfied that it has been rendered fit for that purpose and with the previous approval of the Executive Committee cancels the undertaking.

(4) If no such undertaking as is mentioned in sub-section (3) is accepted by the Mukhya Nagar Adhikari or if, in a case where the Mukhya Nagar Adhikari has accepted such an undertaking, any work to which the undertaking relates is not carried out within the specified period, or the building

is at any time used in contravention of the terms of the undertaking, the Mukhya Nagar Adhikari may, with the previous approval of the Executive Committee, make a demolition order requiring that the building shall be vacated within a period to be specified in the order, not being less than twenty-eight days from the date on which the order becomes operative, and that it shall, within such further period be demolished as the Mukhya Nagar Adhikari deems reasonable and shall serve a copy of the order upon every person upon whom the notice under sub-section (1) was served.

(5) Where it appears to the Mukhya Nagar Adhikari that immediate action is necessary for the purpose of preventing imminent danger to any person or property or a building of the nature specified in sub-section (1) and that the object of taking action under this section would be defeated by the delay in giving notice under that sub-section, he may with the previous approval of the Executive Committee make an order for demolition in the manner, as far as may be, provided in sub-section (4) but with the minimum period for compliance with the order reduced to seven days.

394. Procedure where demolition order made.—(1) As soon as a demolition order under Section 393 has become operative, the owner of the building shall demolish it within the time limited in that behalf by the order, and if the building is not demolished within that time the Mukhya Nagar Adhikari may take measures to demolish the building and sell the materials thereof.

(2) Any expenses incurred by the Mukhya Nagar Adhikari under sub-section (1), after giving credit for the amount realized by sale of the materials, shall be payable by the owner of the building, and any surplus in the hands of the Mukhya Nagar Adhikari after payment of such expenses shall be refunded to the owner.

(3) Any person aggrieved by the decision of the Mukhya Nagar Adhikari under sub-section (2) may, within a period of one month, appeal to the Judge.

395. Appeal against demolition orders.—Any person aggrieved by—

- (i) an order under sub-section (1) of Section 391 ; or
- (ii) an order under sub-section (3) or sub-section (4) of Section 392 ; or
- (iii) a demolition order made under Section 393, but not being an order made under sub-section (5) thereof ;

may within twenty-one days after the date of the service of a copy of the order appeal to the Judge, and no proceedings shall be taken by the Mukhya Nagar Adhikari to enforce any order in relation to which an appeal is brought before the appeal is finally determined.

Disposal of Carcasses of Animals

396. Removal of carcasses of dead animals.—(1) It shall be the duty of the Mukhya Nagar Adhikari to provide for the removal of the carcasses of all animals dying within the City.

(2) The occupier of any premises in or upon which any animal shall die or in or upon which the carcass of any animal shall be found, and the person having the charge of any animal which dies in the street or in any open place, shall, within three hours after the death of such animal or, if the death occurs

at night within three hours after sunrise, report the death of such animal at the nearest office of the Mahapalika health department.

(3) For every carcass removed by Mahapalika agency, whether from any private premises or from public street or place, a fee for the removal of such amount as shall be fixed by the Mukhya Nagar Adhikari shall be paid by the owner of the animal, or, if the owner is not known, by the occupier of the premises in or upon which, or by the person in whose charge, the said animal died.

397. Prohibition of cultivation, use of manure, or irrigation injurious to health.—If the Director of Medical and Health Services or the Civil Surgeon or the Nagar Swasthya Adhikari certifies that the cultivation of any description of crops or the use of any kind of manure or the irrigation of land in any specified manner—

- (a) in a place within the limits of a City is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or
- (b) in a place within or beyond the limits of a City is likely to contaminate the water-supply of such City or otherwise render it unfit for drinking purposes,

the Mukhya Nagar Adhikari may by public notice prohibit the cultivation of such crop, the use of such manure or the use of the method of irrigation so redorted to be injurious, or impose such conditions with respect thereto as may prevent the injury or contamination :

Provided that when, on any land in respect of which such notice is issued, the act prohibited has been practised in the ordinary course of husbandry for the five successive years next preceding the date of prohibition, compensation shall be paid from the Mahapalika Fund to all persons interested therein for damage caused to them by such prohibition.

398. Power to require owners to clear away noxious vegetation.—The Mukhya Nagar Adhikari may, by notice, require the owner or occupier of any land to clear away and remove any vegetation or under growth which may be injurious to health or offensive to the neighbourhood.

Regulation of Public Bathing Washing, etc.

399. Places for public bathing, etc., to be fixed by Mukhya Nagar Adhikari, and regulation of use of such places.—(1) The Mukhya Nagar Adhikari may from time to time by public notice—

- (a) set apart portions of a river or other suitable places vesting in the Mahapalika for use by the public for bathing or for washing animals, or for washing or for drying clothes ;
- (b) specify the times at which and the sex of persons by whom, such places may be used ;
- (c) prohibit the use by the public for any of the said purposes of any place not so set apart ;
- (d) prohibit the use by the public of any portion of a river or place not vesting in the Mahapalika for any of the said purposes ;
- (e) regulate the use by the public of any portion of a river or other place vesting in the Mahapalika and set apart by him for any of the said purposes ; and

(f) regulate the use by the public of any portion of river or other place not vesting in the Mahapalika for any of the said purposes, and of any work, and of the water in any work, assigned and set apart under this Act for any particular purpose.

(2) The Mukhya Nagar Adhikari may charge such fees as the Executive Committee may fix for the use of any place set apart under clause (a) of sub-section (1) by any specified class or classes of persons or by the public generally.

400. Prohibition of bathing, contrary to order.—Except as may be permitted by any order made by the Mukhya Nagar Adhikari in that behalf no person shall—

- (a) bathe in or near any lake, tank, reservoir, fountain, cistern, duct, stand-pipe, stream or well or on any part of a river or other place vesting in the Mahapalika ;
- (b) introduce in any tank, reservoir, stream, well or ditch, any animal, vegetable or mineral matter likely to render the water thereof offensive or dangerous to health ;
- (c) whilst suffering from any contagious, infectious, or loathsome disease, bathe on, in or near any bathing platform, lake, tank, reservoir, fountain, cistern, duct, stand-pipe, stream or well ;
- (d) wash or cause to be washed in or near any such place or work, any animal, clothes or other articles ;
- (e) throw, put or cause to enter into the water in any such place or work any animal or other thing ;
- (f) cause or suffer to drain into or upon any such place or work, or to be brought thereinto or thereupon, anything, or do anything, whereby the water shall be in any degree fouled or corrupted ;
- (g) dry clothers in or upon any such place ;
- (h) in contravention of any order made by the Mukhya Nagar Adhikari under Section 399 use any portion of a river or any place not vesting in the Mahapalika for any purpose mentioned in the said section ;
- (i) contravene the provisions of any notice given by the Mukhya Nagar Adhikari under Section 399 for the use of any such portion of a river or place for any such purpose.

Regulation of Factories, Trades, etc.

401. Factory, etc., not to be newly established without permission of Mukhya Nagar Adhikari.—No person shall—

- (i) newly establish in any premises,
- (ii) remove from one place to another,
- (iii) re-open or renew after discontinuance for a period of not less than three years, or
- (iv) enlarge or extend the area or dimensions of,

any factory, workshop or workplace in which it is intended to employ steam, water, electrical or other mechanical power or any bakery except with the

previous written permission of the Mukhya Nagar Adhikari nor shall any person work or allow to be worked any such factory, workshop, work place or bakery without such permission :

Provided that for the purpose of clause (iii) no such permission shall be required if during the period of discontinuance the machinery has not been removed from the place where the factory, workshop or bakery was originally established.

402. Prohibition of pollution or contamination of water by chemical. etc.—No person engaged in any trade or manufacture specified in Section 438 or the rules shall—

- (a) wilfully cause or suffer to be brought or to flow into any lake, tank, reservoir, cistern, well, duct or other place for water belonging to the Mahapalika or into any drain or pipe communicating therewith, any washing or other substance produced in the course of any such trade or manufacture as aforesaid ;
- (b) wilfully do any act connected with any such trade or manufacture as aforesaid, whereby the water in any such lake, tank, reservoir, cistern, well, duct or other place for water is fouled, polluted or contaminated.

403. Power to require private water-course, etc., to be cleaned or closed.—(1) The Mukhya Nagar Adhikari may, by notice, require the owner of, or the person having control over, a private water-course, spring, tank, well or other place, the water of which is used for drinking, to keep and maintain the same in good repair and to clean the same, from time to time, of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as the Mahapalika may think fit.

(2) When the water of any such water-course, spring, tank, well or other place is proved to the satisfaction of the Mukhya Nagar Adhikari to be unfit for drinking the Mukhya Nagar Adhikari may, by notice, require the owner or person having control thereof to desist from so using such water or permitting others to so use it, and if, after such notice, such water is used by any person for drinking, the Mukhya Nagar Adhikari, may by notice require the owner or person having control thereof to close such well, either temporarily or permanently, or to enclose or fence such water-course, spring, tank, well or other place in such manner as he may direct, so that the water thereof may not be so used.

404. Latrines for factories, schools and places of public resort.—The Mukhya Nagar Adhikari may require by notice any person employing more than twenty workmen or labourers or owning, managing or having control of a market, school or theatre or other place of public resort to provide such latrines and urinals as it may deem fit, and to cause the same to be kept in proper order and to be daily cleansed :

Provided that nothing in this section shall apply to a factory regulated by the ¹[Factories Act, 1948.]

405. Power to require removal of nuisance arising from tanks, etc.—The Mukhya Nagar Adhikari may by notice require the owner or occupier of any land or building to cleanse, repair, cover, fill up or drain off a private well, tank, reservoir, pool, depression or excavation therein which may appear to the Mukhya Nagar Adhikari to be injurious to health or offensive to the neighbourhood :

Provided that the owner or occupier may require the Mukhya Nagar Adhikari to acquire at the expense of the Mahapalika or otherwise provide, any land or rights in land necessary for the purpose of effecting drainage ordered under this section.

Comments

Analogous Law.—Section 269 of the U. P. Municipalities Act.

Delegation of power to issue notice to the Medical Officer—Can be made.—Under analogous Section 269 of the Municipalities Act, in the case of *Govind Deoji v. Municipal Board, Bindraban*¹, it was held that such delegation can be duly made. In the present Nagar Mahapalika Act, such delegation under this section is not included in the list of non-delegable functions, vide Part D of Schedule I referred to in Section 119.

Notice issued by the Medical Officer.—A notice issued by the Medical Officer, if power is duly delegated to him, is a valid notice, vide *Govind Deoji v. Municipal Board*¹.

"Depression".—It covers all sorts of depressions whether natural or made otherwise—See *Govind Deoji v. Municipal Board*¹.

Civil Court's jurisdiction is not barred.—There can be no doubt that the Municipal Board possesses very wide powers (under the analogous Section 269), but they are not to be exercised for ulterior purposes or in a capricious, wanton and arbitrary manner. If they are so used, they can be controlled by the Civil Court, vide *Govind Deoji v. Municipal Board*¹ where notice for filling up depressions was issued.

Limitation for suit.—6 months from the accrual of cause action—vide *Govind Deoji v. Municipal Board, Bindraban*¹.

Prevention and Checking of Dangerous Diseases

406. Power of Mukhya Nagar Adhikari, Nagar Swasthya Adhikari, etc., in case of dangerous diseases.—Where a person attacked with a dangerous disease or suffering from such disease, is—

- (a) found lying in any vehicle or any public place, or
- (b) without proper lodging or accommodation, or
- (c) living in a room or house which he neither owns nor is otherwise entitled to occupy, or
- (d) lodged in a room or set of apartments occupied by more than one family and any of the occupiers objects to his continuing to lodge therein,

the Mukhya Nagar Adhikari may, on the advice of a medical officer of rank not inferior to that of an Assistant Surgeon, remove the patient to the hospital or a place at which persons suffering from such disease are received for medical treatment and may do anything necessary for such removal.

407. Any place may at any time be inspected for purpose of preventing spread of dangerous disease—The Mukhya Nagar Adhikari may at any time, by day or by night, without notice or after giving such notice of his intention as shall in the circumstances, appear to him to be reasonable, inspect any place in which any dangerous disease is reputed or

1. 1937 A. L. J. 1338 (1360) : 1938 Alld. 110 : 174 I. C. 445.

suspected to exist, and take such measures as he shall think fit to prevent the spread of the said disease beyond such place.

408. Information of dangerous disease to be given.—Every person —

- (a) being a medical practitioner and in the course of such practice becoming cognizant of the existence of any dangerous disease in any dwelling other than a public hospital in the city, or
- (b) in default of such medical practitioner, being the owner or occupier of such dwelling, and being cognizant of the existence of any such dangerous disease therein, or
- (c) in default of such owner or occupier, being the person in charge of, or in attendance on, a person suffering from any such dangerous disease in such dwelling and being cognizant of the existence of the disease therein,

shall give information to such officer as the Mukhya Nagar Adhikari may appoint in this behalf respecting the existence of such disease.

409. Closure of lodging and eating houses.—The Mukhya Nagar Adhikari may on being satisfied that it is in the public interest so to do, by written order direct that any lodging house or any place where articles of food and drink are sold or prepared, stored or exposed for sale, being a lodging house or place in which a case of dangerous disease exists or has recently occurred, shall be closed for such period as may be specified in the order :

Provided that such lodging house or place may be declared to be open if the Nagar Swasthya Adhikari certifies that it has been disinfected or is free from infection.

410. Persons suffering from dangerous disease, etc., not to do certain things.—No person while suffering from any dangerous disease or loathsome disorder shall—

- (a) make or offer for sale an article of food or drink for human consumption or a medicine or drug, or
- (b) wilfully touch any such article, medicine or drug when exposed for sale by others, or
- (c) take any part in the business of washing or carrying soiled clothes.

411. Mukhya Nagar Adhikari may take special measures on outbreak of any dangerous disease. (1) In the event of the City being at any time visited or threatened with an outbreak of any dangerous disease, or in the event of any infectious disease breaking out or being likely to be introduced into the City, the Mukhya Nagar Adhikari if he thinks the ordinary provisions of this Act and any rules thereunder or of any other law at the time in force are insufficient for the purpose, may, with the sanction of the State Government—

- (a) take such special measures, and
- (b) by public notice prescribe such temporary orders to be observed by the public or by any person or class of persons, as are specified in any rules in this behalf and as he shall deem necessary to prevent the outbreak of such disease or the spread thereof.

(2) The Mukhya Nagar Adhikari shall forthwith report to the Mahapalika any measures taken and any orders made by him under sub-section (1).

Disposal of the Dead

412. Places for disposal of the dead to be registered.—(1) Every owner or person having the control of any place already used for burying, burning or otherwise disposing of the dead, shall apply to the Mukhya Nagar Adhikari within a period of six months from the appointed day to register the same and the Mukhya Nagar Adhikari shall cause the same to be registered.

(2) Such applications shall be accompanied by a plan bearing the signature of a licensed surveyor in token of its having been prepared by or under the supervision of such surveyor, of the place to be registered, showing the locality, boundaries and extent of the same. The application shall also contain information as regards the name of the owner or person or community interested therein, the system of management and such further particulars as the Mukhya Nagar Adhikari may require.

(3) The Mukhya Nagar Adhikari may, on receipt of such application and plan, register the said place in a register which shall be kept for this purpose.

(4) The Mukhya Nagar Adhikari shall cause to be deposited in the Mahapalika office at the time of registration the plan referred to in sub-section (2).

(5) If the Mukhya Nagar Adhikari is not satisfied with the plan or statement of particulars he may refuse or postpone registration, until his objections have been removed.

(6) Every place vesting in the Mahapalika used for burying, burning or otherwise disposing of the dead shall be registered in the register kept under sub-section (3), and a plan showing the locality, extent and boundaries thereof and bearing the signature of the Mukhya Nagar Adhikari shall be deposited in the Mahapalika office.

413. New places for disposal of the dead not to be opened without permission of Mukhya Nagar Adhikari.—No place which has never previously been lawfully used as a place for the disposal of the dead and registered as such shall be opened by any person for the said purpose without the written permission of the Mukhya Nagar Adhikari who, with the approval of the Mahapalika, may grant or withhold such permission.

414. Provisions of new places for disposal of the dead.—(1) If the existing places for the disposal of the dead shall at any time appear to be insufficient or if any place is closed under the provisions of Section 415 the Mukhya Nagar Adhikari shall, with the sanction of the Mahapalika, provide other fit and convenient places for the said purpose, either within or without the City, and shall cause the same to be registered in the register kept under Section 412 and shall deposit in the Mahapalika office, at the time of registration of each place so provided, a plan thereof showing the locality, extent and boundaries of the same.

(2) All the provisions of this Act and the rules and bye-laws shall apply to any place provided under sub-section (1) without the City and vesting in the Mahapalika as if such place were situate within the City.

415. Closing of place for burial of the dead.—(1) If after personal inspection the Mukhya Nagar Adhikari is at any time of opinion—

(a) that any place of public worship is or is likely to become injurious to health by reason of the state of the vaults or graves within the

walls of or underneath the same, or in any churchyard or burial ground adjacent thereto, or

- (b) that any other place used for the disposal of the dead is or is likely to become injurious to public health,

he may submit his considered opinion with the reasons therefor to the Mahapalika, and the Mahapalika shall forward the same with its opinion, for the consideration of the State Government.

(2) Upon receipt of the opinion mentioned in sub-section (1) the State Government after such further inquiry as it deems fit to make, may, by notification published in the official *Gazette* and in such newspapers as it may deem necessary, direct that such place of public worship or other place shall no longer be used for the disposal of the dead.

(3) On the expiration of three months from the date of any such notification, the place to which it relates shall no longer be used for the disposal of the dead.

(4) Private space set apart for burial may be exempted from any such direction subject to such conditions as the Mukhya Nagar Adhikari may impose in this behalf, provided that the limits of such space are sufficiently defined and that it shall only be used for the burial of members of the family of the owners thereof.

416. Re-opening of place for burial of the dead.—(1) If, after personal inspection, the Mukhya Nagar Adhikari is of opinion that any place which had been closed under the provisions of Section 415 has, by lapse of time, become no longer injurious to health and may without risk or danger be again used for the said purpose, he may submit his opinion with the reasons therefor to the Mahapalika, which shall forward the same, with its opinion for the consideration of the State Government.

(2) Upon receipt of such opinion the State Government, after such further enquiry as it deems fit to make, may, by notification in the official *Gazette*, direct that such place be re-opened for the disposal of the dead.

417. Burials within places of worship and exhumations not to be made without permission of Mukhya Nagar Adhikari.—(1) No person shall, without the written permission of the Mukhya Nagar Adhikari under sub-section (2)—

- ¹[(a) make any vault or grave or internment within any wall of any place of worship or underneath any passage, porch, portico, plinth or verandah of any such place ;]
- (b) make any internment or otherwise dispose of any corpse in any place which is closed for the dead under Section 415 ;
- (c) build, dig, or cause to be built or dug any grave or vault, or in any way dispose of or suffer or permit to be disposed of, any corpse at any place which is not registered in the register kept under Section 412 ;
- (d) exhume any body, except under the provisions of Section 176 of the Code of Criminal Procedure, 1898, or of any other law for the time being in force from any place for the disposal of the dead.

(2) The Mukhya Nagar Adhikari may in special cases grant permission for any of the purposes aforesaid, subject to such general or special orders as the State Government may from time to time make in this behalf.

Comments

Section 176 Cr. P. C.—Reads as under :—

Inquiry by Magistrate into cause of death—(1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests, shall, and, in any other case mentioned in Section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an enquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an enquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) *Power to disintern corpses*—Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interned, in order to discover the cause of his death the Magistrate may cause the body to be disinterned and examined.

Section 174 Cr. P. C.—Reads as under :—

Police to inquire and report on suicide, etc.—(1) The officer in charge of a police-station or some other police-officer specially empowered by the State Government in that behalf, on receiving information that person—

- (a) has committed suicide, or
- (b) has been killed by another, or by an animal, or by machinery, or by an accident, or
- (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

418. Acts prohibited in connection with disposal of dead.—No person shall—

- (a) retain a corpse on any premises without burning, burying or other wise lawfully disposing of the same, for so long a time after death as to create a nuisance ;
- (b) carry a corpse or part of a corpse along any street without having and keeping the same decently covered or without taking such precautions to prevent risk of infection or injury to the public health as the Mukhya Nagar Adhikari may by public notice, from time to time, think fit to require ;
- (c) except where no other route is available, carry a corpse or part of a corpse along any street along which the carrying of corpse is prohibited by a public notice issued by the Mukhya Nagar Adhikari in this behalf ;
- (d) remove a corpse or part of a corpse, which has been kept or used for purposes of dissection, otherwise than in a closed receptacle or vehicle ;

- (e) whilst conveying a corpse or part of a corpse place or leave the same on or near any street without urgent necessity ;
- (f) bury or cause to be buried any corpse or part of a corpse in a grave or vault or otherwise in such manner as that the surface of the coffin, or, when no coffin is used, the corpse or part of a corpse shall be at a less depth than six feet from the surface of the ground ;
- (g) build or dig, or cause to be built or dug, any grave or vault in any burial ground at a less distance than two feet from the margin of any other grave or vault ;
- (h) build or dig, or cause to be built or dug, a grave or vault in any burial ground in any line not marked out for this purpose by or under the order of the Mukhya Nagar Adhikari ;
- (i) without the written permission of the Mukhya Nagar Adhikari re-open for the internment of a corpse or of any part of a corpse, a grave or vault already occupied ;
- (j) after bringing or causing to be brought to a burning ground any corpse or part of a corpse, fail to burn or cause the same to be burnt within six hours from the time of the arrival thereof at such ground ;
- (k) when burning or causing to be burnt any corpse, or part of a corpse permit the same or any portion thereof to remain without being completely reduced to ashes or permit any cloth or other article used for the conveyance or burning of such corpse or part of a corpse to be removed or to remain on or near the place of burning without its being completely reduced to ashes.

419. State Government may extend provisions of Chapter outside limits of City.—The State Government may, by order which shall be published in the official *Gazette*, apply to any area to be specified in the order but not lying beyond a distance of two miles from the limits of the City, the provisions of any section in this Chapter and of rules made thereunder, subject to such adaptations whether by way of modification, addition or omission, as it may deem to be necessary and expedient and thereupon the provisions and rules so applied shall have effect in that area as it were within the City.

420. Power to make rules.—(1) The State Government may make rules for the purposes of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers such rules may be provided for—

- (i) liability of owners and occupiers to collect and deposit dust, *etc.* ;
- (ii) liability of occupiers in areas not covered by Section 388 to have collected and conveyed to receptacles, *etc.*, provided under Section 385 excrementitious and polluted matter accumulating upon their premises ;
- (iii) removal of rubbish and filth accumulating in large quantities on premises ;
- (iv) removal of nuisance caused by—
 - (a) accumulating of building materials on premises ;
 - (b) defective roofs or other insanitary condition of premises ;

- (c) smoke of kitchens in dwelling houses and other smoke, dust, etc. ;
- (d) Pools, swamp, ditch, tank, well, pond, quarry, holes, drain, water-course or any collection of water ;
- (e) dangerous tanks, wells, holes, etc. ;
- (f) dangerous quarrying ;
- (g) collection of offensive matter in premises ;
- (v) cleansing of insanitary private water-course, spring, tank, well, etc., used for drinking ;
- (vi) regulation of keeping and tethering of animals in the City ;
- (vii) sanitary regulation of factories or workshops, workplace, etc., subject to the provisions of the Indian Boilers Act, 1923 and supplying of information connected therewith ;
- (viii) regulation of washing of clothes by washermen and provision of washing places ;
- (ix) giving of information of animals suffering from contagious or infectious disease ;
- (x) disinfection of houses and other public and private places to prevent spread of dangerous diseases ;
- (xi) prohibition and regulation of the use of whistles, trumpets, loud-speakers and other noise-producing instrument operated by any mechanical means ;
- (xii) the removal, trimming and cutting of trees and hedges.

CHAPTER XVI

Regulation of Markets, Slaughter-Houses, Certain Trades and Acts, Etc.

421. What to be deemed private markets and slaughter-houses.—For the purposes of this Chapter all markets and slaughter-houses other than Mahapalika markets and slaughter-houses shall be deemed to be private markets and slaughter-houses.

422. Mukhya Nagar Adhikari's powers in respect of Mahapalika markets and slaughter-houses, etc.—Subject to the provisions of this Act and the rule and bye-laws framed thereunder the Mukhya Nagar Adhikari shall have the power—

- (a) upon being authorized by the Mahapalika in that behalf, to construct, purchase, take on lease or otherwise acquire any building or land for the purpose of establishing a Mahapalika market or a Mahapalika slaughter-house or stock-yard within, and with the prior sanction of the State Government, without the limits of the Mahapalika and of extending or improving any existing Mahapalika market or slaughter-house ;
- (b) from time to time, to build and maintain such Mahapalika markets, slaughter-houses and stock-yards and such stalls, shops, sheds, pens and other buildings or conveniences as may be deemed necessary for the use of the persons carrying on trade or business in, or frequenting, such Mahapalika markets, slaughter-houses or stock-yards ;

- (c) to provide for maintaining in any such Mahapalika markets such buildings, places, machines, weights, scales and measures for weighing and measuring goods, sold therein as he shall think fit ;
- (d) upon being authorized by the Mahapalika in that behalf, to close any Mahapalika market or slaughter-house or stock-yard or any portion thereof and to dispose of as the property of the Mahapalika the premises occupied for any market or slaughter-house or stock-yard or any portion thereof so closed ;
- (e) with the previous sanction of the Mahapalika, to prohibit by public notice from time to time within a distance of fifty yards of any Mahapalika market the sale or exposure for sale of the commodities or of any of the commodities specified in the notice ordinarily sold in the said Mahapalika market and with like sanction to cancel or modify any such notice at any time ;
- (f) to charge for the occupation or use of any stall, shop, standing, shed or pen or other building in a Mahapalika market, slaughter-house or stock-yard, and for the right to expose goods for sale in a Mahapalika market, and for weighing and measuring goods sold in any such market and for the right to slaughter animals in any Mahapalika slaughter-houses, such stallages, rents and fees as shall, from time to time be fixed by him, with the approval of the Executive Committee, in that behalf ;
- (g) with the approval of the Executive Committee, farm the stallages, rents and fees leviable as aforesaid or any portion thereof, for any period not exceeding one year at a time, or
- (h) to put up to public auction, or, with the approval of the Executive Committee, dispose of, by private sale, the privilege of occupying or using any stall, shop, standing, shed or pen or other building in a Mahapalika market, slaughter-house or stock-yard for such term and on such conditions as he shall think fit.

423. Opening of private markets and of private slaughter-houses.

—(1) The Mahapalika shall from time to time determine whether the establishment of new private markets or the establishment or maintenance of private slaughter-houses shall be permitted in the City or in any specified portion of the City.

(2) No person shall establish a private market for the sale of, or for the purpose of exposing for sale, animals intended for human food, or any article of human food or livestock or articles of food for livestock or shall establish or maintain a private slaughter-house except with the sanction of and after obtaining a licence from the Mukhya Nagar Adhikari who shall be guided in giving such sanction and licence by the decisions of the Mahapalika at the time in force under sub-section (1) :

Provided that the Mukhya Nagar Adhikari shall not refuse to give sanction or to grant licence for running a private market or a slaughter-house already lawfully established on the appointed day if application for such sanction and licence is made within two months of the appointed day, except on the ground that the place where the market or slaughter-house is established fails to comply with any requirements of this Act or of any rule or by-law framed thereunder.

(3) When the establishment of a private market or a slaughter-house has been so sanctioned, the Mukhya Nagar Adhikari shall cause a notice of such sanction to be affixed in Hindi and such other language or languages as the Mahapalika may from time to time specify on some conspicuous spot on or near the building or place where such market is to be held.

Explanation.—For the purpose of sub-section (2) the owner or occupier of a place in which a private market or slaughter-house is established shall be deemed to have established such market.

(4) The Mukhya Nagar Adhikari shall not cancel or suspend or refuse to renew any licence for keeping open a private market for any cause other than the failure of the owner thereof to comply with some provision of this Act, or with some regulation or with some bye-law.

(5) The Mukhya Nagar Adhikari may cancel or suspend any licence for failure of the owner of a private market to give in accordance with the conditions of his licence a written receipt for any stallage, rent, fee, or other payment received by him or his agent from any person for the occupation or use of any stall, shop, standing, shed, pen or other place therein.

(6) When the Mukhya Nagar Adhikari has refused, cancelled or suspended any licence to keep open a private market, he shall cause a notice of his having so done to be affixed in such language or languages as the Mahapalika may from time to time specify on some conspicuous spot on or near the building or place where such market has been held.

424. Removal of live cattle, sheep, goats or swine from any Mahapalika slaughter-house, stock-yard, market or premises.—No person shall, without the written permission of the Mukhya Nagar Adhikari and without the payment of such fees as may be prescribed by him, remove any live cattle, sheep, goats or swine from any Mahapalika slaughter-house or stock-yard or from any Mahapalika market or premises used or intended to be used for or in connection with such slaughter-house or stock-yard :

Provided that such permission shall not be required for the removal of any animal which has not been sold within such slaughter-house, stock-yard, market or premises and which has not been within such slaughter-house, stock-yard, market or premises for a period longer than that prescribed under orders made by the Mukhya Nagar Adhikari in this behalf, or which has, in accordance with any bye-laws, been rejected as unfit for slaughter at such slaughter-house, market or premises.

425. Power to expel persons contravening rules, bye-laws or regulations.—(1) The Mukhya Nagar Adhikari may expel from any Mahapalika market, slaughter-house or stock-yard any person, who or whose servant has been convicted of contravening any rule, bye-law or regulation in force in such market, slaughter-house or stock-yard and may prevent such person, by himself or his servants, from further carrying on any trade or business in such market, slaughter-house or stock-yard or occupying any stall, shop, standing, shed, pen or other place therein, and may determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(2) If the owner of any private market or slaughter-house licensed under this Act or the lessee of such market or slaughter-house or any stall therein or any agent or servant of such owner or lessee has been convicted for contravention of any rule, bye-law or regulation the Mukhya Nagar Adhikari may require such owner, lessee, agent or servant to remove himself from any

such market or slaughter-house within such time as may be mentioned in the requisition and if he fails to comply with such requisition, he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such premises.

(3) If it appears to the Mukhya Nagar Adhikari that in any such case the owner or lessee is acting in collusion with a servant or agent convicted as aforesaid who fails to comply with a requisition, under sub-section (2), the Mukhya Nagar Adhikari may, if he thinks fit, cancel the licence of such owner or lessee in respect of such premises.

426. Prohibition of sale in Mahapalika markets without licence.

—(1) No person shall, without licence from the Mukhya Nagar Adhikari, sell or expose for sale any animal or article in any Mahapalika market.

(2) Any person contravening this section may be summarily removed by any Mahapalika officer or servant.

427. Prohibition of sale in unauthorized private markets.—No person who knows that any private market has been established without the sanction of the Mukhya Nagar Adhikari, or is kept open after a licence for keeping the same open has been refused, cancelled or suspended by the Mukhya Nagar Adhikari, shall sell or expose for sale therein any animal or articles of human food or any livestock or food for livestock.

428. Prohibition of sale of animals, etc., except in markets.—No person shall, without a licence from the Mukhya Nagar Adhikari, sell or expose for sale—

(a) any four-footed animal or any meat or fish intended for human food, in any place other than a Mahapalika or private market ;

(b) ices and syrups or aerated waters, (Kulfi, sugarcane juice, cut or peeled fruit and vegetables, any confectionary or sweetmeats whatsoever or such other cooked food or other articles intended for human consumption as may from time to time by public notice be specified by the Mukhya Nagar Adhikari in any place other than a Mahapalika or private market or licensed eating house or sweetmeat shop.

429. Restriction on slaughter of animals for sale.—No person shall without the permission of the Mukhya Nagar Adhikari slaughter or cause to be slaughtered any animal for sale in the City except in a Mahapalika slaughter-house or a licensed private slaughter-house.

430. Places for slaughter of animals not intended for sale or slaughtered for religious purpose.—The Mukhya Nagar Adhikari may, by public notice, and with the previous sanction of the Mahapalika, fix premises within the City in which the slaughter of animals of any particular kind not for sale or the cutting up of carcass of any such animal shall be permitted, and prohibit, except in case of necessity, such slaughter elsewhere within the City :

Provided that the provisions of this section shall not apply to animals slaughtered for any religious purpose.

431. Powers of District Magistrate in respect of animals not slaughtered for sale.—Whenever it appears to the District Magistrate to be necessary for the preservation of the public peace or order, he may, subject to the control of the Prescribed Authority, prohibit or regulate, by

public notice the slaughter, within the limits of a city, of animal or animals of any specified description for purposes other than sale and prescribe the mode and route in and by which such animals shall be brought to and meat shall be conveyed from the place of slaughter.

Comments

Analogous Law—Section 239 of U. P. Municipalities Act, 1916.

Prescribed Authority.—See Section (56).

432. Prohibition of import of cattle, etc., into City without permission.—(1) No person shall without the written permission of the Mukhya Nagar Adhikari bring into the City any cattle, sheep, goats or swine intended for human consumption, or the flesh of any such animal which has been slaughtered at any slaughter-house or place not maintained or licensed under this Act.

(2) Any police officer may arrest without warrant any person bringing into the City any animal or flesh in contravention of sub-section (1).

(3) Any animal brought into the City in contravention of this section may be seized by the Mukhya Nagar Adhikari or by any Mahapalika officer or servant or by any Police Officer or in or upon Railway premises by any Railway servant and any animal or flesh so seized may be sold or otherwise disposed of as the Mukhya Nagar Adhikari shall direct and the proceeds, if any, shall belong to the Mahapalika.

(4) Nothing in this section shall be deemed to apply to cured or preserved meat.

433. Mukhya Nagar Adhikari may enter any place where slaughter of animals or sale of flesh contrary to the provisions of this Act suspected.—(1) If the Mukhya Nagar Adhikari shall have reason to believe that any animal intended for human consumption has been or is being or is likely to be slaughtered, or that the flesh of any such animal is being sold or exposed for sale, in any place or manner not duly authorized under the provisions of this Act, the Mukhya Nagar Adhikari may at any time, by day or by night, without notice, enter such place for the purpose of satisfying himself as to whether any provision of this Act or of any bye-law is being contravened thereat and may seize any such animal or the carcass of such animal or such flesh found therein.

(2) The Mukhya Nagar Adhikari may remove and sell by auction or otherwise dispose of any animal or the carcass of any animal or any flesh seized under sub-section (1).

(3) If within one month of such seizure the owner of the animal, carcass or flesh fails to appear and prove his claim to the satisfaction of the Mukhya Nagar Adhikari or if such owner is convicted of an offence under this Act in respect of such animal or carcass or flesh the proceeds of any sale under sub-section (1) shall vest in the Mahapalika.

(4) No claim shall lie against any person for compensation for any damage necessarily caused by any entry made under sub-section (1) or by the use of any force necessary for effecting such entry.

434. Mukhya Nagar Adhikari to provide for inspection of articles exposed for sale for human food.—It shall be the duty of the Mukhya Nagar Adhikari to make provision for the constant and vigilant

inspection of animals, carcasses, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, dairy produce and any other article exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or of preparation for sale and intended for human food or for medicine, the proof that the same was not exposed or hawked about or deposited or brought for any such purpose or was not intended for human food or for medicine resting with the party charged.

435. Unwholesome articles, etc., to be seized.—(1) The Mukhya Nagar Adhikari may at all reasonable times inspect and examine any such animal or article as aforesaid and any utensil or vessel used for preparing, manufacturing or containing the same.

(2) If any such animal or article appears to the Mukhya Nagar Adhikari to be diseased or unsound or unwholesome or unfit for human consumption, as the case may be, or is not what it is represented to be, or if any such utensil or vessel is of such kind or in such state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human consumption, he may seize and carry away such animal, article, utensil or vessel, in order that the same may be dealt with as hereinafter provided and he may arrest and take to the nearest police station any person in charge of any such animal or article.

436. Disposal of perishable articles seized under Section 435.—If any meat, fish, vegetable or other article of a perishable nature be seized under Section 435 and the same is, in the opinion of the Mukhya Nagar Adhikari, diseased, unsound, unwholesome or unfit for human consumption, as the case may be, the Mukhya Nagar Adhikari shall cause the same to be forthwith destroyed in such manner as to prevent its being again exposed for sale or used for human consumption and the expenses thereof shall be paid by the person in whose possession such article was at the time of its seizure.

437. Regulation of offensive trade.—(1) If it is shown to the satisfaction of the Mukhya Nagar Adhikari that any building or place within the limits of the City which any person uses or intends to use as a factory or other place of business for the manufacture, storage, treatment or disposal of any article, by reason of such use, or by reason of such intended use, occasions or is likely to occasion a public nuisance, the Mukhya Nagar Adhikari may at his option require by notice the owner or occupier of the building or place—

(a) to desist or refrain, as the case may be, from using or allowing to be used, the building or place for such purpose, or

(b) only to use, or allow to be used, the building or place for such purpose under such conditions or after such structural alterations as the Mahapalika imposes or prescribes in the notice with the object of rendering the use of the building or place for such purpose free from objection.

(2) Whoever, after receiving a notice given under sub-section (1), uses or allows to be used any building or place in contravention of the notice shall be liable on conviction to a fine which may extend to two hundred rupees and to a further fine which may extend to forty rupees for every day on which he so uses or allows to be used the place or building after the date of the first conviction.

438. Certain things not to be kept, and certain trades and operations not to be carried on without licence.—(1) Except under and in

conformity with the terms and conditions of a licence granted by the Mukhya Nagar Adhikari, no person shall—

- (a) keep in or upon any premises any article specified in the bye-laws in any quantity or in excess of the quantity specified in the bye-laws as the maximum quantity of such article which may at one time be kept in or upon the same premises without a licence ; and
- (b) keep in or upon any building intended for or used as a dwelling or within fifteen feet of such building cotton, in pressed bales or *boras* or loose, in quantity exceeding four hundred-weight ;
- (c) keep, or allow to be kept, in or upon any premises horses, cattles or other four-footed animals—
 - (i) for sale,
 - (ii) for letting out on hire,
 - (iii) for any purposes for which any charge is made or any remuneration is received, or
 - (iv) for sale of any produce thereof ;
- (d) carry on or allow to be carried on, in or upon any premises—
 - (i) any trade or operations connected with any trade specified in the bye-laws,
 - (ii) any trade or operation which is dangerous to life or health or property, or likely to create a nuisance either from its nature or by reason of the manner in which or the conditions under which, the same, is or is proposed to be carried on ;
- (e) carry on within the City, or use any premises, for the trade or operation of a farrier.

(2) A person shall be deemed to have known that a trade or operation is dangerous or likely to create a nuisance within the meaning of paragraph (ii) of clause (d) of sub-section (1), if written notice to that effect, signed by the Mukhya Nagar Adhikari, has been served upon such person or affixed to the premises to which it relates.

(3) A person shall be deemed to carry on or to allow to be carried on a trade or operation within the meaning of clause (d) of sub-section (1) if he does any act in furtherance of such trade or is in any way engaged or concerned therein whether as principal, agent, clerk, master, servant, workman, handicraftsman or otherwise.

(4) When any premises are used in the manner described in clause (c) or (d) of sub-section (1) it shall be presumed, until the contrary is proved, that the owner or occupier of such premises, or both have permitted such use.

(5) It shall be lawful for the Mukhya Nagar Adhikari—

- (a) to grant any licence referred to in sub-section (1) subject to such further restriction or conditions (if any), as he shall think fit in the circumstances of the case, or
- (b) to withhold any such licence.

(6) Every person to whom a licence is granted by the Mukhya Nagar Adhikari under sub-section (1) shall keep such licence in or upon the premises, if any, to which it relates.

(7) The Mukhya Nagar Adhikari may at any time by day or night enter or inspect any premises for the use of which a licence has been granted under this section.

(8) Nothing in sub-sections (6) and (7) shall be deemed to apply to mills for spinning or weaving cotton, jute, wool or silk or to any other large mill or factory which the Mukhya Nagar Adhikari may from time to time with the approval of the Executive Committee, specially exempt from the operation thereof.

(9) To claim shall lie against any person for compensation for any damage necessarily caused by any such entry or by the use of any force necessary for effecting such entry : provided that force shall not be used for effecting an entry, unless when there is reason to believe that an offence is being committed against some provision of this Act or some bye-law made under this Act.

439. Butchers and persons who sell flesh of animals to be licensed.—No person shall, without or otherwise than in conformity with the terms of a licence granted by the Mukhya Nagar Adhikari in this behalf—

- (a) carry on within the City, or at any Mahapalika slaughter-house, the trade of a butcher ;
- (b) use any place in the City for the sale of the flesh of any animal intended for human consumption or any place without the City for the sale of such flesh for consumption in the City.

440. Licence required for dealing in dairy produce.—No person shall without, or otherwise than in conformity with the terms of a licence granted by the Mukhya Nagar Adhikari in this behalf—

- (a) carry on within the City the trade or business of a dairyman ;
- (b) use any place in the City as a dairy or for the sale of any dairy produce.

441. Conditions under which architects, engineers, structural designers, surveyors, or plumbers, can carry on their respective professions in the City.—(1) Every architect, engineer, structural designer, surveyor or plumber carrying on his profession in the City shall take out a licence in that behalf from the Mukhya Nagar Adhikari.

(2) The licence shall be for a term to be fixed by bye-laws, but may be renewed as often as may be necessary for further terms on payment of the prescribed fee.

(3) No licence shall be granted under sub-section (1) unless the person applying therefore possesses the qualifications prescribed in that behalf and no application for a licence shall be refused if the applicant possesses those qualifications except on the ground that there is a reasonable apprehension that he is incompetent or has been found guilty of gross misconduct in the discharge of his duty as architect, engineer, structural designer, surveyor, or plumber, as the case may be.

442. Licensed plumbers to be bound to execute work properly.—No licensed plumber shall execute any work under this Act carelessly or negligently or make use of bad material, appliance or fitting for the purpose of such work.

443. Executive Committee to fix fees for plumbers.—The Executive Committee shall fix the fees or charges to be paid to licensed plumbers for any work done by them for all or any purpose under this Act, and no licensed plumber shall demand or received more than the fee or charge so prescribed for any such work.

444. Loitering and soliciting for immoral purpose.—Whoever, in a street or public place within the limits of the City loiters for the purpose of prostitution or importunes a person to the commission of sexual immorality, shall be liable on conviction to a fine which may extend to fifty rupees :

Provided that no court shall take cognizance of an offence under this section except on the complaint of the person importuned or on the complaint of a Mahapalika or a police officer not below the rank of a sub-inspector respectively authorized in this behalf in writing by the Mahapalika and the District Magistrate.

Comments

Analogous Law—Section 246 of the U. P. Municipalities Act.

445. Brothels, etc.—(1) When a Magistrate of the first class receives information—

- (a) that a house in the vicinity of a place of worship or an educational institution or a boarding house, hostel or mess used or occupied by students is used as a brothel or for the purpose of habitual prostitution or by disorderly persons of any description, or
- (b) that any house is used as aforesaid to the annoyance of respectable inhabitants in the vicinity, or
- (c) that a house in the immediate neighbourhood of a Cantonment is used as a brothel or for the purpose of habitual prostitution,

he may summon the owner, tenant, manager or occupier of the house to appear before him either in person or by agent; and if satisfied that the house is used as described in clause (a), clause (b), or clause (c), may by a written order, direct such owner, tenant, manager, or occupier, within a period to be stated in such order, not less than five days from the date thereof, to discontinue such use :

Provided that action under this sub-section shall be taken only—

- (i) with the sanction or by order of the District Magistrate, or
- (ii) on the complaint of three or more persons residing in the immediate vicinity of the house to which the complaint refers, or
- (iii) on the complaint of the Mahapalika.

(2) If a person against whom an order has been passed by a Magistrate under sub-section (1) fails to comply with such order within the period stated therein, the Magistrate may impose on him a fine which may extend to one hundred rupees for every day after the expiration of that period during which the house is so used.

Comments

Analogous Law—Section 247 of the U. P. Municipalities Act.

Whether this Section contravenes Art. 19, Constitution—No.—The question that arose in *Smt. Mithan v. Municipal Board, Orai*¹, was that this section contravenes Art. 19 in so far as it interferes with the free practice of their profession, occupation or business by the petitioners. Their lordship found no substance in this point. The provision in question neither seeks to abolish any particular profession, occupation, trade or business nor to prohibit its practice. It merely seeks to regulate its practice by imposing certain restriction of a most reasonable character in the manner of carrying on of the particular profession, business or occupation. It permits the practice of the particular profession, occupation or business, but directs that it shall not be carried on in such a manner, as to be a source of annoyance to the respectable inhabitants in the vicinity. These restrictions are of a salutary nature and are obviously imposed in the general interests of public morality and decency, and cannot be characterised as unreasonable or improper.

Requirements of order under this section—It is no where laid down that in such cases the Magistrate is bound to specify all the ingredients of the wrong in the operative portion of his judgment. It is quite enough if a perusal of the entire order shows that in his opinion the persons who made a grievance on that score were respectable persons, vide *Smt. Mithan v. Municipal Board, Orai*¹. But it was earlier considered essential that evidence be duly recorded and the Magistrate must satisfy himself, first, that the complainants were persons residing in the immediate vicinity of the house to which the complaint referred and secondly, that the house was used for the purposes mentioned in clause (a) of Section 247, vide *Inamun Bibi v. Emperor*². In another case, it was earlier held that a Magistrate under this section is not expressly required to hold an enquiry; since he has to summon the owner, tenant, etc., it may be said that he must hear him, but there is nothing to suggest that he must hold an enquiry and recorded evidence of the parties. He has to satisfy only himself that the house is used as a brothel; how he has to do this is left to his absolute discretion, vide *Mst. Mithan v. Municipal Board, Orai*¹.

Whether revision to High Court lies—No.—The jurisdiction conferred by Section 247 (1) of the Municipalities Act upon a First Class Magistrate is special or extra jurisdiction conferred upon him. Consequently, a Magistrate passing order under that section does not do so as an inferior criminal court within the meaning of Section 435 Cr. P. C. and his order is not as such revisable by the High Court, vide *Mst. Mithan v. Municipal Board, Orai*¹.

Criminal Procedure Code—Applicability—In a case under Section 247 of the U. P. Municipalities Act, analogous to the present section of this Adhinyam it was held that Section 350 Cr. P. C. was applicable to those proceedings, vide *Basanti v. Emperor*³.

Sub-clause (1) (b)—Scope—Under the aforesaid sub-clause the order is directed not only against the carrying on of undesirable activities by particular persons but also against the use of the accommodation for a particular purpose or in a particular manner by that person. Before an order can be passed under Section 247 (1) (b) of the Municipalities Act the activities should be such as to reach the level of annoyance, vide *Smt. Mithan v. Municipal Board, Orai*¹.

1. A. I. R. 1958 All. 603 : 1958 A. L. J. 398 : 1958 A. W. R. 505.

2. 18 A. L. J. 302 : 21 Cr. L. J. 370 : 55 Cr. L. J. 850.

3. A. I. R. 1925 All. 245.

*Whether this Section is hit by Art. 14, Constitution—No—*The Magistrate under this Section of the Municipalities Act, is not invested with an absolutely arbitrary power. The law has placed limits on his powers. The Magistrate cannot take notice of any case that he likes on his own initiative. The case can only come before him after passing a number of hurdles. As mentioned in the section itself the complaint cannot be taken cognizance of by him except with the sanction or by the order of the District Magistrate or on a petition having been received by him by three or more persons residing in immediate vicinity of the house or on the complaint of the Board.

Even after the matter is brought to his notice through the channel prescribed, he cannot pass any order that he likes without hearing the party concerned. This section lays down that he may summon the owner, tenant, manager or occupier of the house to appear before him either in person or by agent. In view of the fact that the proceedings under sub-clause (1) might result in a penal order against such a person the word "may" in sub-clause (1) should be interpreted as having the force of the word "shall". It is incumbent on the Magistrate to give an opportunity to the party concerned to appear before him. The fact that this is mandatory on him is further borne out by the requirement in sub-clause (1) that the Magistrate's order should be a written one.

No doubt this section says that the Magistrate should be satisfied, but the points in respect of which he should be satisfied are specified in sub-clause (a), (b) and (c) of Section 247 sub clause (1) of the Municipalities Act. Therefore while laying down that the Magistrate should be satisfied, the law has specified the ingredients or principles which should guide him in recording his satisfaction. In these circumstances, the intention of the law was that the Magistrate should give an opportunity to the party concerned to present its case and should conduct the proceedings in a reasonable manner and in accordance with the principles of natural justice. Where the proceedings are not so conducted, the courts of law will have power to interfere with the order of the Magistrate. In this view, their lordships in *Smt. Mithan v. Municipal Board, Orai*¹ held that Section 247 of the Municipalities Act is not hit by Art. 14 of the Constitution.

446. Begging, etc.—Whoever, in a street or public place within the City, begs importunately for alms, or exposes or exhibits with the object of exciting charity a deformity or disease or an offensive sore or wound, shall be liable on conviction to imprisonment which may extend to one month or to a fine which may extend to fifty rupees or to both.

447. Improper feeding of animals kept for dairy purposes or used for food.—No person shall feed or allow to be fed animal which is kept for dairy purposes, or may be used for food, on filthy or deleterious substances.

448. Stacking, etc, of inflammable materials.—The Mukhya Nagar Adhikari may, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting wood, dry grass, straw or other inflammable materials, or from placing mats or thatched huts or lighting fires in a place or within limits specified in the notice.

449. Displacing pavements, etc.—(1) No person shall displace, take up or make an alteration in, or otherwise interfere with, the pavement,

1. A. I. R. 1958 All. 603 : 1958 A. L. J. 393 : 1958 A. W. R. 503.

gutter, flags or other materials of public street, or the fences, walls or posts thereof, or a Mahapalika lamp, lamp-post, bracket, direction-post, stand-post, hydrant or other such Mahapalika property therein without the written consent of the Mukhya Nagar Adhikari or other lawful authority, and no person shall extinguish a Mahapalika light.

(2) Any expense incurred by the Mahapalika by reason of the doing of any such thing as is mentioned in sub-section (1) may be recovered from the offender in the manner provided by Chapter XXI.

Comments

Analogous Law—Section 261 of the U. P. Municipalities Act.

"Gutter"—*Scope*—Where a hole was made by the accused persons in the side of a Municipal drain leading from the City through some fields to the river, i. e., at the point where the drain was passing through some fields, the argument was that a gutter to be the gutter of a public street need not be in that street or, in other words, any drain which lead through a street and then from the street through the fields or elsewhere to take the water away from the street really appertains to the street and was strictly within the meaning of the words "gutter of a street" was repelled in *Emperor v. Bafati*¹ because the field could not come within the meaning of the word "Street" and was held that the gutter was not interfered with.

450. Discharging fire-arms, etc.—No one shall discharge fire-arms or let off fire-works or fire-balloons or engage in a game, in such a manner as to cause, or to be likely to cause, danger to persons passing by or dwelling or working in the neighbourhood, or risk of injury to property.

451. General provisions regarding grant, suspension or revocation of licences and written permissions and levy of fees, etc.—(1) Whenever it is provided by or under this Act that a licence or a written permission may be given for any purpose, such licence or written permission shall specify the period for which, and the restrictions and conditions subject to which, the same is granted and the date by which application for the renewal of the same shall be made and shall be given under the signature of the Mukhya Nagar Adhikari or of a Mahapalika Officer empowered under Section 119 to grant the same.

(2) Except as may otherwise be provided by or under this Act, for every such licence or written permission a fee may be charged at such rate as shall from time to time be fixed by the Mukhya Nagar Adhikari, with the sanction of the Mahapalika.

(3) Subject to the provisions of the proviso to Sub-section (2) of Section 423 any licence or written permission granted under this Act may at any time be suspended or revoked by the Mukhya Nagar Adhikari, if he is satisfied that it has been secured by the holder through misrepresentation or fraud or if any of its restriction or condition is infringed or evaded by the person to whom the same has been granted, or if the said person is convicted of an infringement of any of the provisions of this Act or of any rule, bye-law or regulation in any matter to which such licence or permission relates.

(4) When any such licence or written permission is suspended or removed, or when the period for which the same was granted has expired, the person to whom the same was granted shall, for all purposes of this Act be deemed to be without a licence or written permission, until the Mukhya

Nagar Adhikari's order for suspending or revoking the licence or written permission is cancelled by him or until the licence or written permission is renewed, as the case may be :

Provided that when an application has been made for the renewal of a licence or permission by the date specified therein the applicant shall be entitled to act as if it has been renewed pending the receipt of orders.

(5) Every person to whom any such licence or written permission has been granted shall, at all reasonable times, while such written permission or licence remains in force, if so required by the Mukhya Nagar Adhikari, produce such licence or written permission.

(6) Every application for a licence or permission shall be addressed to the Mukhya Nagar Adhikari.

(7) The acceptance by or on behalf of the Mukhya Nagar Adhikari of the fee for a licence or permission shall not in itself entitle the person paying the fee to the licence or permission.

Comments

*Licence—What is—*The granting of a licence cannot be appropriately regarded merely as a privilege. vide *G. S. S Motor Service v. Madras State*,¹ *Rameshwar Prasad v. D. M.*² and *S. Iqbal Singh v. Municipal Board, Lucknow*.³

*Presumption under this Section—*Putting an application for renewal makes the applicant to act as if it has been renewed—proviso to sub-section (4) of Section 451.

But, however, where only the fees are deposited, it will not entitle the depositor to the licence-sub-section (7).

But again the presumption in case of depositing the fees is not attached with the fact that a person applies for permission or licence and in this case it means that such a person (making application) becomes entitled to such a licence. Here distinction appears to have been drawn between "person depositing fees" and "person applying for". This is so confirmed by the proviso to sub-section (4) of Section 451.

*Suspension or revocation—*Has been discussed in sub-section (3) of Section 451 but there is no provision for non-renewal of licence. However, only the grounds for suspension or revocation, by analogy, can be extended to non-renewal also and the Mukhya Nagar Adhikari cannot deny renewal on any other ground and he will be bound to renew it if such an application within time has been moved.

452. Licence fees, etc.—The Mukhya Nagar Adhikari may charge a fee to be fixed by bye-law for any licence, sanction or permission which he is entitled or required to grant by or under this Act.

453. Power to make rules.—(1) The State Government may make rules to carry out the purposes of this Chapter.

(2) Without prejudice to the generality of the foregoing power such rules may provide for—

(a) the regulation of sales within or outside Mahapalika or private markets ;

1. A. I. R. 1953 Mad. 279.

2. A. I. R. 1954 All. 144.

3. A. I. R. 1959 All. 186 (189) (D. B.).

- (b) defining or determining the limits of private markets ;
- (c) proper approaches and environs and ventilation for private markets ;
- (d) proper pavement and drainage of private markets and slaughter-houses ;
- (e) issue of orders for the guidance of licensed surveyors, architects or engineers, structural designers, clerks, clerks of works and plumbers, respectively.

CHAPTER XVII

Vital Statistics

454. Registration of births and deaths.—The Mukhya Nagar Adhikari shall cause to be maintained a register of births and deaths in which shall be entered, in the manner prescribed, every birth or death taking place in the City.

455. Power to make rules.—The State Government may frame rules to be proved for—

- (a) the procedure for securing information regarding births and deaths in the City ;
- (b) the particulars to be entered in any register of births and deaths ;
- (c) the powers to be exercised by officers and servants of the Mahapalika for collecting the information regarding births and deaths ;
- (d) giving of information of each birth and death in the City by the father, mother, or other relation of the new born or the deceased, as the case may be, or by any other person, to officers and servants of the Mahapalika and correction of errors in registers of births and deaths ;
- (e) registration of the name of the child or of alteration of the names ; and
- (f) such other incidental and consequential matters as may be necessary for the purpose of carrying out the provisions of this Chapter.

CHAPTER XVIII

Compensation

456. General Power of Mukhya Nagar Adhikari to pay compensation.—In any case not otherwise expressly provided for in this Act, or in any rule or bye-law made thereunder, the Mukhya Nagar Adhikari may, with the previous approval of the Executive Committee, pay compensation to any person who sustains damage by reason of the exercise of any of the powers vested by this Act or by any such rule or bye-laws in the Mukhya Nagar Adhikari, or in any Mahapalika officer or servant.

Comments

Analogous law—Almost similar to Section 125 of Municipalities Act.

"By reason of the exercise of any of the powers vested"—Meaning—The words as appear in the analogous section were held to embrace not only positive or overt acts but also omission or failure to do certain acts, the doing of which

is obligatory on the Board in the course of performance of its statutory duties, vide *Municipal Board, Meerut v. Smt. Maha Kaur*.¹

457. Compensation to the owner for value of immovable property deteriorated.—(1) In any case in which immovable property has deteriorated in value owing to the exercise of any power conferred by Sections 231, 232, 249, 250, 251 and 284, the Mahapalika may offer to the owner of the property reasonable compensation.

(2) If the owner of the property which has deteriorated in value accepts the compensation, he shall be deemed to have granted to the Mahapalika a perpetual right to continue the exercise of its powers under any of the said sections in such manner as not to create greater nuisance or to cause greater damage than was being created, or caused at the time when compensation was received.

458. Principle on which and manner in which compensation should be determined.—(1) In determining the amount of compensation to be paid under sub-section (1) of Section 457 the Mukhya Nagar Adhikari or the Mahapalika, as the case may be, shall be guided as far as may be, by the provisions of Sections 23 and 24 of the Land Acquisition Act, 1894 as amended by this Act and as to matters which cannot be dealt with under these provisions by such provisions as may be prescribed by rules.

(2) Any person aggrieved by the decision of the Mukhya Nagar Adhikari or the Mahapalika in the matter of award of compensation under Section 456 or Section 457, as the case may be, may, within a period of one month, appeal to the Judge in accordance with the provisions of Chapter XX.

459. Power to make rules.—(1) The State Government may make rules to carry out the purposes of this Chapter.

(2) Without prejudice to the generality of the foregoing power such rules may provide for—

- (a) the principles on the basis of which the compensation shall be determined;
- (b) assessment of compensation by the Mukhya Nagar Adhikari;
- (c) filing and disposal of objections to tentative assessments.

CHAPTER XIX

Penalties

460. Certain offences punishable with fine.—(1) Whoever—

- (a) contravenes any provision of any of the sections, sub-sections or clauses mentioned in the first column of Part I of the table in Schedule III or of any order made thereunder, or

- (b) fails to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses,

shall be punished for each such offence, with fine which may extend to the amount mentioned in that behalf in the second column of the said Part:

- (2) Whoever, after having been convicted of—

- (a) contravening any provision of any of the sections, sub-sections or clauses mentioned in the first column of Part II of the table in Schedule III or of any order made thereunder, or
- (b) failing to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses,

continues to contravene the said provision or to neglect to comply with the said requisition or fails to remove or rectify any work or thing done in contravention of the said provision, as the case may be, or fails to vacate any premises shall be punished, for each day that he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the second column of the said Part.

Comments

Analogous law—Sub-clause (1) is almost similar to Section 307 of the U. P. Municipalities Act.

Non-Compliance—Illustration—Where a person was required to construct septic tank for flush latrine according to Government design and also to increase the height of the pipe for emitting the gas beyond the height of the nearby houses that person raised the height of the pipe but did not construct the septic tank on the ground that there was no approved design by the Government, it was held that it was a case of non-compliance with the notice and was punishable under the provisions of the law, vide *Brij Nandan Sharma v. State*¹ (a case under the analogous Section 307 of the Municipalities Act.)

Penalty for breach of Rules, bye-laws or regulations—See Section 55) of this Adhiniyam.

Service of notice—Proper person—The law requires that the person on whom the notice is served must have the power to comply it because it seems obvious that it would be grossly unfair to punish for non-compliance to a notice a person who was unable to comply with the notice. See *Brij Behari Lal v. Emperor*² but where it is served on representative of the owner not in his personal capacity but as Secretary of an Anjuman and that person does not suggest that he had no power to comply it, it was held that such a service of notice was legal and valid, vide *Azizuddin v. Emperor*.³

Power to issue notice—At what stage to be challenged—An objection of this nature should be taken at the very earliest opportunity in the trial court so that the prosecution could call sufficient evidence to establish the fact that the person issuing notice was in fact authorised to send such notice, vide *Azizuddin v. Emperor*.⁴

Validity of notice—Criminal Court can consider validity—In a case under the analogous Section 307 of the Municipalities Act, it was held by a Full Bench, in *Emperor v. Mumtaz Hussain*⁵, that where on an appeal to the District Magistrate under Section 318 the District Magistrate dismisses the appeal holding

1. 1970 A. W. R., (Journal) 15.

2. A. I. R. 1943 Alld. 123 : 206 I. C. 38 : 1943 A. L. J. 103 (F. B.).

3. A. I. R. 1943 Oudh 390 (391).

4. *Ibid*.

5. A. I. R. 1935 Oudh 337 : 155 I. C. 344 : 36 Cr. L. J. 720 : 1935 O. W. N. 509 (F. B.).

the notice to be a regular one, i. e., a legal and proper one and a prosecution is launched under Section 307 for failure to comply with the notice under Section 186, the Criminal Court cannot go into the question of the legality, validity and reasonableness of the notice. The Criminal Court is precluded by Section 321 from questioning the legality of the notice for the purpose of finding the accused guilty or not guilty.

But where the appeal against the notice was not decided on merits but was withdrawn, the above view became inapplicable, vide *Nanak Prasad v. Rai Bareilly Municipality*.¹

Also see Head-note "Criminal Court's Jurisdiction" under Section 467 in this Book.

Continuing offence—Subsequent prosecution—Whether barred under Section 403 (1) Cr. P. C.—See Head-note below.

Continuing offence—Subsequent prosecution—Whether barred by Article 20 (2) of the Constitution—No—Where a person is prosecuted for having committed an offence which is a continuing one, during a particular period there is no bar for prosecuting him again for committing a similar offence on some other date. Therefore, the bar raised under Article 20 of the Constitution and under Section 403 of Cr. P. C. is not attracted to such a prosecution, vide *Municipal Board, Saharanpur v. Kripa Ram*² a case regarding an offence punishable under the similar provision in Section 299 of the U. P. Municipalities Act.

461. Offences punishable under the Penal Code.—(1) Whoever contravenes any provision of any of the sections, sub-sections or clauses of this Act mentioned in the first column of the following table or of any order made thereunder, and whoever fails to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses, shall be deemed to have committed an offence punishable under the section of the Indian Penal Code respectively specified in the second column of the said table as the section of the said Code under which such person shall be punishable, namely :

| Sections of this Act | | | | | | Sections of the Indian Penal Code under which offenders are punishable |
|---|-----|-----|-----|-----|-----|--|
| [267 (3)], 400, clauses (a), (b), (c), (d), (e) and (f) | | | | | | 277 |
| 411 | ... | ... | ... | ... | ... | 188 |
| 556 | ... | ... | ... | ... | ... | 177 |

1. A. I. R. 1943 Oudh 292 (294) (D. B.).

2. A. I. R. 1965 Alld. 160.

3. Subs. by U. P. Act XXIII of 1961.

(2) Whoever fails to comply with a lawful requisition, notice or order of the Mukhya Nagar Adhikari for information, or a written return relative to the determination of the annual value of any building or to the levy or assessment of any Mahapalika tax or whoever furnishes information or makes a return which he knows to be false, incorrect or misleading shall be deemed to have committed an offence punishable under Section 176 or Section 177 of the Indian Penal Code, as the case may be.

Comments:

Section 277 Penal Code.—

Fouling water of public spring or reservoir.—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 188 Penal Code.—

Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order, promulgated by a public servant lawfully empowered to promulgate, such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces or is likely to produce harm.

Illustration

All order is promulgated by a public servant lawfully empowered to promulgate, such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Section 177 Penal Code.—

Furnishing false information.—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, Section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In Section 176 and in this section the word “offence” includes any act committed at any place out of India, which if committed in India, would be punishable under any of the following sections namely, 302, 304, 382, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 450, 457, 458, 459 and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.

Prosecution—What to establish.—Where an accused was charged for assaulting an officer who had gone to the place of the accused and the accused had resisted in execution of the warrant of distress it was held that the prosecution should first establish the validity of the issue of distress warrant and further that the said officer while engaged in the performance of his duties as such officer was in fact performing a duty which was legally imposed upon him vide *Chhotey Lal v. Emperor*.

462. Punishment for offences of preparing false electoral rolls.—

Any officer or servant of the Mahapalika who knowingly prepares or makes an entry in the list of persons qualified to be enrolled as voters at ward elections which is incorrect or false shall, on conviction, be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

463. Penalty on member or Nagar Pramukh acquiring interest in contract, etc.—

A member or Nagar Pramukh of a Mahapalika who, otherwise than with the permission in writing of the Prescribed Authority, knowingly acquires or continues to have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment, with, by, or on behalf of the Mahapalika, shall be deemed to have committed an offence under Section 168 of the Indian Penal Code:

Provided that a person shall not be deemed for the purposes of this section to acquire, or continue to have, any share or interest in a contract or employment by reason only of his—

(a) having a share or interest in any lease, sale, or purchase of land or buildings, or in any agreement for the same, provided that such share or interest was acquired before he became a member or Nagar Pramukh, or

(b) having a share in a joint stock company which shall contract with, or be employed by, or on behalf of the Mahapalika, or

- (c) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Mahapalika is inserted, or
- (d) holding a debenture or otherwise being interested in a loan raised by, or on behalf of, the Mahapalika, or
- (e) being retained by the Mahapalika as a legal practitioner, or
- (f) having a share or interest in the occasional sale of an article in which he regularly trades to the Mahapalika to a value not exceeding, in any one year, such amount as the Mahapalika, with the sanction of the State Government, fixes in this behalf, or
- (g) being a party to an agreement made with the Mahapalika for the supply of water for charges.

Comments

Section 468 Penal Code

Procedure on accused appearing before Magistrate or Court.—(1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of Section 464 or Section 465, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of Section 466.

464. Provision against servants being interested in contract, etc.—

(1) A person who has directly or indirectly, by himself or his partner, a share or interest in a contract with, by, or on behalf of, a Mahapalika or in any employment with, under, by, or on behalf of, a Mahapalika, other than as a Mahapalika servant, shall be, disqualified for being a servant of such Mahapalika.

(2) A Mahapalika servant who shall acquire or continue to have, directly or indirectly, by himself or his partner, a share or interest in any such contract or servant or employment as aforesaid shall cease to be a Mahapalika servant, and his office shall become vacant.

(3) A Mahapalika servant who knowingly acquires to have, directly or indirectly, a share or interest in a contract or, except in so far as concerns his employment as a Mahapalika servant, in any employment with, under, by or on behalf of, a Mahapalika of which he is a servant, shall be deemed to have committed an offence under Section 168 of the Indian Penal Code.

(4) Nothing in this section shall apply to any such share or interest in a contract or employment with, under, by, or on behalf of, the Mahapalika as is referred to in clauses (b), (d), and (g) of proviso to Section 463, or to any share or interest acquired or retained with the permission of the Prescribed Authority, in any lease, sale or purchase of land or buildings, or in any agreement for the same.

1[464-A. Punishment for contravention of Sections 112-C and 112-D.—Whoever acts or abets the commission of an act which is in contravention of the provisions of Section 112-C or Section 112-D shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.]

465. Punishment for offences against Section 267.—(1) Whoever contravenes any provision of [sub-section (2)]² of Section 267 shall, on conviction, be punished with imprisonment which may extend to one month or with fine which may extend to one hundred rupees or with both.

(2) When any person is convicted under sub-section (1) the Magistrate who convicts him may order the immediate removal or any building, or the immediate discontinuance of the operation or use of land, in respect of which such conviction has been held.

(3) If any order made under sub-section (2) is disobeyed or the execution thereof resisted, the offender shall, on conviction, be punished with imprisonment which may extend to one month or with fine which may extend to one hundred rupees or with both.

466. Penalty for evasion of octroi or toll.—Where any vehicle, animal or goods imported into the limits of the City are liable to the payment of toll or octroi any person who, with the intention of defrauding the Mahapalika, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the City any such vehicle, animals or good, upon which payment of the toll or octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend to ten times the amount of such toll or octroi or to two hundred and fifty rupees, whichever may be greater.

Comments

Analogous Law—Section 155 of the Municipalities Act.

Scope—Evasion of octroi or toll by any person, or abetment in such abetment or any attempt therefor is made punishable in this Section.

Abetment is defined in Section 107 of the Penal Code which runs as under :—

Abetment of a thing—A person abets the doing of a thing, who—

Firstly—Instigates any person to do that thing ; or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing ; or

Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to procure, a thing to be done, is said to instigate the doing of that thing.

1. Added by U. P. Act XXI of 1964.

2. Subs. by U. P. Act XXVIII of 1961.

Illustration

A, a public officer, is authorised by a warrant from a court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act; and thereby facilitates the commission thereof, is said to aid the doing of that Act.

Attempt—Section 511 Penal Code defines it as under:

Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustration

(a) A makes an attempt to steal some jewels by breaking open a box; and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and, therefore, is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket, A is guilty under this Section.

Master and Servant—Where owner of a shop evaded octroi duty while acting through his servant it was held that the owner being the master is himself liable for being conviction for evasion of payment of octroi duty, vide *Emperor v. Gopal Krishna*, a case under the analogous provisions in Section 155 of the Municipalities Act.

467: General Penalty.—Whoever contravenes any provision of this Act or rule, bye-law, regulation, licence, permission or notice issued thereunder or fails to comply with any requisition lawfully made under any such provision shall, if no penalty is provided in any other provision of this Act for such contravention or failure, be punished, for each such offence, with fine which may extend to one hundred rupees and with further fine which may extend to twenty rupees for every day on which such contravention or failure continues after the first conviction.

Comments

Scope—Where U/Rule 159 of the Municipal Account Code, B was under a duty to have sent the railway receipt with the invoice or a written declaration of the details of the consignment to head octroi office for assessment of octroi duties and as he failed to do, so it was held that B was punishable under

this Section besides Section 466 whereunder he was also liable as he had evaded to pay Octroi on those goods, vide *Baladin Ram v. State*.¹

No Estoppel—Where a Nagar Mahapalika treated a factory in the past as outside its limits and did not charge octroi duty on goods arriving there for some reason or the other, it was held in *Baladin Ram v. State*¹ that it cannot create an estoppel against them.

Penal liability—Exception—Where a person lawfully entered in occupation of Municipal land continued to occupy it after the expiry of the term of licence may although be illegal but would not be covered in this section so as to entail a penal liability, vide *Bhagwat Prasad v. Municipal Board Dhampur*.²

Criminal Court's jurisdiction—It is a fundamental principle of criminal law that no law can forbid questioning of any order, bye-law, etc., (for which contravention one is being prosecuted) in a criminal Court. Also see *Priyam Singh v. State*.³

Following are a few illustrative cases where prosecution were quashed, conviction set aside and the impugned laws, and proceedings, etc., were held illegal, void or ultra vires. *Municipal Board Moradabad v. Gopi Chand*,⁴ *Sohan Lal v. District Magistrate*,⁵ *Rex v. Uttam Chand*.⁶

468. Extent of penal responsibility of agents and trustees of owners.—No person who receives the rent of any premises in any capacity described in paragraph (i), (ii) or (iii) of sub-clause (a) of clause (52) of Section 2 shall be liable to any penalty under this Act for omitting to do any act as the owner of such premises, if he shall prove that his default was caused by his not having funds of, or due to, the owner sufficient to defray the cost of doing the act required.

469. Offence by companies, etc.—Where a person committing an offence under this Act or any rule, bye-law or regulation is a company or a body corporate, or an association of persons (whether incorporated or not), or a firm, every director, manager, secretary, agent or other officer or person, concerned with the management thereof, and every partner of the firm shall unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

470. Compensation payable by offenders against this Act for damage caused by them.—(1) If, on account of any act or omission, any person has been convicted of an offence against this Act or against any rule, regulation or bye-law, and, by reason of such act or permission of the said person, damage has occurred to any property of the Mahapalika, compensation shall be paid by the said person for the said damage notwithstanding any punishment to which he may have been sentenced for the said offence.

1. 1968 A. W. R. 347.

2. 1958 A. L. J. 1061 (1062) : 1969 A. W. R. 47.

3. A. I. R. 1969 Alld. 513 (D. B.).

4. 1968 A. W. R. 695 (F. B.).

5. 1970 A. W. R. 546 : A. I. R. 1971 Alld. 137.

6. A. I. R. 1950 Allahabad 541.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence, and on non-payment of the amount of compensation so determined, the same shall be recovered under a warrant from the said Magistrate as if it were a fine inflicted by him on the person liable therefor.

CHAPTER XX

Proceedings Before Judge, District Judge, Magistrate and Others

471. References to the Judge.—In the following cases a reference shall be made to the Judge—

- (1) whether the Mukhya Nagar Adhikari may be directed to remove a shalt or pipe on the application of the owner of a building or hut under Section 249 ;
- (2) regarding the amount of the price for the land required for setting forward a building under Section 284 ;
- (3) regarding the amount or payment of expenses for any work executed or any measure taken or things done under the orders of the Mukhya Nagar Adhikari or any Mahapalika Officer under Section 522 ;
- (4) regarding the amount or payment of expenses or compensation and the apportionment thereof falling under any of the provisions of this Act or any rule or bye-law thereunder not otherwise specifically provided for.

Appeals against Valuations and Taxes

472. Appeals when and to whom to lie.—(1) Subject to the provisions hereinafter contained, appeals against any annual value or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal shall be heard unless—

- (a) it is brought within fifteen days after the accrual of the cause of complaint ;
- (b) in the case of an appeal against an annual value an objection has previously been made ¹[and has been disposed of under Section 209].
- (c) in the case of an appeal against any tax in respect of which provision exists under this Act for an objection to be made to the Mukhya Nagar Adhikari against the demand, such objection has previously been made and disposed of ;

¹[(d) in the case of an appeal against any amendment or alteration made in the assessment list for property taxes under sub-section (1) of Section 213, an objection has been made in pursuance of a notice issued under the proviso to the said sub-section and such objection has been disposed of ;]

(e) in the case of an appeal against a tax, or in the case of an appeal made against an annual value after a bill for any property tax assessed upon such value has been presented to the appellant,

1. Sub. by U. P. Act XXI of 1964.

the amount claimed from the appellant has been deposited by him with the Mukhya Nagar Adhikari.

Comments

Analogous Law—Sub-section (1) corresponds to Section 160, Sub-section (2) corresponds to Section 161 respectively of the Municipalities Act.

Appellate Court—Additional evidence can be taken—See this head note under Section 499 of this Act.

C. P. C. Applies to the appeals to the Judge—See this head note under Section 499 of this Act.

Scope—Order of mutation is appealable, vide *Kailash Nath v. Raghubar Dayal*.¹

Summary—Appeals against Annual Value or Taxes.

—To be filed firstly to the M. N. A.

—Within 15 days after the person concerned received the notice of demand for the first time, if it relates to any amendment made in the assessment book for property taxes ; otherwise, no time limit for filing objection to the M. N. A.

—And (after its decision by the M. N. A.) then to the Judge.

—To be brought within 15 days after the accrual of the cause of complaint (*i. e.*, decision by the M. N. A.) See Section 473.

—Valuation or Assessment or the liability of a person to be assessed or taxed not to be questioned in Civil Court—Section 226.

Limitation—15 days from the date of accrual of cause of complaint. See Headnote "cause of complaint" under Section 473 in this Book.

Objections not disposed off—Limitation is 30 days—Where no objection is disposed off, *e. g.*, where no objection is filed or where it is not considered, Section 473 (1) of the Nagar Mahapalika Act will not apply and in that case under provision of Section 500 (2) of this Act, a limitation of 30 days will apply.

Imposing of 'Octroi' duty is also appealable—It has been held that 'tax' includes 'octroi' or 'toll' also, vide, *Municipal Board, Benaras v. Krishna & Co.*² and *Munna Lal v. Chairman, Municipal Board.*³ Accordingly where an 'octroi' is charged in respect of certain goods comes within the 'assessment of a tax' and appeal lies against such an order under this section, vide *Munna Lal v. Chairman, Municipal Board.*³

'Assessment' includes process of charging 'Octroi' duty—The process by which an octroi *Muharrir* examines goods and refers to his schedule and comes to the conclusion that certain goods come under certain heads of that Schedule and should pay a certain tax is a process which can be correctly described as 'assessment' vide *Munna Lal v. Chairman, Municipal Board.*³

Fixing rate of tax can be challenged—A tax payer can agitate under this section which is a statutory remedy provided under the Adhiniyam against

1. 1969 A. W. R. 595 (D. B.) : 1969 A. L. J. 577.

2. 1935 A. L. J. 635 : A. I. R. 1935 Alld. 760 (D. B.).

3. A. I. R. 1935 Alld. 153.

the assessment where the resolution of the Mahapalika fixing the rate of tax speaks of "Property tax" and not "general tax" and was as such urged to be invalid. It was held in *M. P. Sugar Mills v. Kanpur Municipality*¹ that it was such a question which could be raised under the provisions of the Adhiniyam.

Scope of second Appellate court—See Section 476.

Whether certified copy of the order appealed must be filed—No—This section does not require filing of a certified copy of the order appealed against. It is only for the party who may require that copy for preparation of that appeal vide *L. R. Cotton Mills v. Addl. Commissioner, Allahabad*.²

Imposition of Theatre Tax—Section does not apply—See *Niranjan Lal Bhargava Trust v. State of U. P.*³

473. Cause of complaint when to be deemed to have accrued.—For the purposes of Section 472, cause of complaint shall be deemed to have accrued as follows, namely—

- (a) in the case of an appeal against an annual value, on the day when the objection made against such value under Section 209⁴ is disposed of ;
- (b) in the case of an appeal against any tax referred to in clause (c) of sub-section (2) of [Section 472]⁴ on the day when the objection against the tax is disposed of by the authority concerned ;
- ⁴[(c) In the case of an appeal against any amendment or alteration made in the assessment list for property taxes under sub-section (1) of Section 213, on the day when the objection made in pursuance of a notice issued under the proviso to the said sub-section is disposed of ;]
- (d) in the case of an appeal against a tax not covered by clause (b) above on the day when payment thereof is demanded or when a bill therefor is served.

Comments

Cause of Complaint—See Section 473 (a)—It is the day when the objection made to M. N. A. against such value is disposed off and not its communication as is provided in the analogous Section 161 of the Municipalities Act. Where no objections were disposed of in respect of valuation of a particular period but only for additional constructions on a latter date, the limitation should run from this latter date and not from any earlier date. See the Headnote "Recurring cause of complaint" in this section below.

Ex parte decision—Where a matter is decided *ex parte*, limitation should run from the date of knowledge. For analogy, see Section 488 Cr. P. C. and Land Acquisition Act where there also exists no provisions for limitation to run from the date of knowledge but the courts have held so. See *Haish*

1. A. I. R. 1969 Alld. 393 (398) (D. B.).

2. A. I. R. 1967 Alld. 435 (436).

3. 1969 A. L. J. 295 (304).

4. Subs. by U. P. Act XXI of 1964.

Chandra v. Dy. Land Acquisition Officer,¹ *Zohra Begum v. Mohd. Ghousa*,² *Hari Singh v. Smt. Bakhtwari*,³ *P. Iyer Nadar v. State of Madras*.⁴

Limitation Act—Sections 5, 12 and 14 of the Limitation Act applies to the Nagar Mahapalika Act by virtue of Section 500 of the Nagar Mahapalika Act.

Notice—Notice before disposal of objections to the person concerned is essential under Section 209 (3) of the Nagar Mahapalika Act. This section is analogous to Section 143 of the Municipalities Act and as such ex parte order was held illegal, vide *Lal Mohan Banerjee v. Municipal Board, Allahabad*.⁵

Estoppel—The constitutional right of challenging the validity of a new taxation measure cannot be taken away by applying the principle of estoppel.

Recurring cause of complaint—Where a water cess was illegally imposed and the assessee had to pay it on demand of the authorities concerned, the assessee filed a suit for the recovery of the amount of tax illegally recovered from him, it was held that the cause of action, in such matters, arises on such occasion when the cess is demanded and so it is a recurring causing of action and the limitation would run from the date when the illegal cess was demanded, vide *Secretary of State v. Jankiramayya*.⁶

474. Arbitration—Where any appeal against the annual value or tax fixed or charged under this Act is pending and all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before a decision is given in such appeal, apply in writing to the Judge for an order of reference on such matter and on such application being made the provisions of the Arbitration Act, 1940, relating to arbitration in suits shall, so far as they can be made applicable, apply to such application and the proceedings to follow thereon, as if the said Judge were a Court within the meaning of the Act and the application were an application made in a suit.

Comments

Scope—There can be no arbitration even in view of this section at least in respect of a claim of a Municipality or Mahapalika for octroi duty under this Adhiniyam, vide *Union of India v. Nagar Mahapalika, Allahabad*.⁷

475. Appointment of expert valuer—(1) If any party to an appeal against an annual value makes an application to the Judge either before the hearing of the appeal or at any time during the hearing of the appeal, but before evidence as to value has been adduced, to direct a valuation of any premises in relation to which the appeal is made, the Judge may, in his discretion, appoint a competent person to make the valuation and any person so appointed shall have power to enter on, survey and value the premises in respect of which the direction is given.

1. A. I. R. 1961 S. C. 1500 : 1961 A. W. R. 500.

2. A. I. R. 1966 Andhra Pradesh 50 : 1966 Cr. L. J. (1) 129.

3. 1970 A. W. R. (H. C.) 329.

4. 1955 N. U. C. Alld. 1988.

5. A. I. R. 1965 Madras 50 (D. B.).

6. A. I. R. 1914 Mad. 534 (535) (D. B.).

7. 1971 A. W. R. 776 (782) (F. B.).

Provided that, except when the application is made by the Mukhya Nagar Adhikari no such direction shall be made by the Judge unless the applicant gives such security as the Judge thinks proper for the payment of the costs of valuation under this sub-section.

(2) The costs incurred for valuation under sub-section (1) shall be costs in the appeal, but shall be payable in the first instance by the applicant.

(3) The Judge may, and on the application of any party to the appeal shall, call as a witness the person under sub-section (1) for making the valuation and, when he is so called any party to the appeal shall be entitled to cross-examine him.

476. Appeal to the District Judge—An appeal shall lie to the District Judge—

(a) from any decision of the Judge in an appeal under Section 472 by which an annual value in excess of twelve thousand rupees is fixed, and

(b) from any decision of the Judge in an appeal under the said section, upon a question of law or usage having the force of law or the construction of a document :

Provided that no such appeal shall be heard by the District Judge unless it is filed within one month from the date of the decision of the Judge.

Comments

Scope—Second Appeal—Section 472 of the Adhiniyam envisages an appeal by an assessee only and, therefore, it may be argued that the second appeal to the District Judge under this Section 476 can only be preferred by the assessee and not by the Mahapalika but such contention is not sound. Section 476 provides for an appeal to the District Judge from any decision of the Judge in appeal under Section 472 of this Adhiniyam irrespective of whether the applicant is the assessee or the Assessing Authority, vide *Niranjan Lal Bhargawa Trust v. Nagar Mahapalika, Allahabad*.¹ The appellate Court can enhance the assessment as well and that too on the appeal of the assessee even if it finds that the principle adopted in reducing the tax was unjustified, vide *Preet Bros. v. Municipal Board*.²

Second Appeal—Minimum valuation—This section provides that a second appeal would lie only where valuation more than Rs. 12,000/- is fixed by the First appellate court, i. e., the Judge. But in a case it was urged that the appeal under this section would be maintainable only when the difference between the amount fixed by the sub-committee and the First appellate court but the said contention was repelled in *Niranjan Lal Bhargawa Trust v. Nagar Mahapalika, Allahabad*.¹

Second Appeal—On what grounds—(a) Its valuation must exceed Rs. 12,000/-.

(b) (i) There should be some question of law or usage having the force of law, or

(ii) There should be some question in respect of construction of a document.

1. 1970 A. L. J. 332 (336) : 1970 A. W. R. 113.

2. 1969 A. W. R. 782 (783).

As the section has been worded, it appears that the first and any of the clauses of the second ground must co-exist because the conjunctive word "and" instead of "or" has been used between the said two clauses in this section.

Second Appeal—Instances of interference—Where the order of assessment did not disclose the manner of assessment and was made ignoring the objections and basic requirements of law, regarding annual value, it was held that the whole assessment had to be set aside and the assessing authority was directed to revise the assessment in accordance with law after considering the objections of the assessee, vide *Niranjana Lal Bhargava Trust v. Nagar Mahapalika, Allahabad*.¹

Where the District Magistrate under the Municipalities Act, as an appellate authority, reviewed his previous order beyond expiry of 3 months period as prescribed under Section 164 (2) of the Municipalities Act, such order was held beyond jurisdiction void and ineffective and the High Court quashed it, vide *Rameshwari Devi v. District Magistrate, Saharanpur*.²

Order of District Judge—Revision under Section 115 C. P. C. in High Court—Where an assessment of property tax is made arbitrarily or where an appellate authority exercises its jurisdiction by making an assessment of its own ignoring the basic requirements, the order of the appellate court can very well be challenged in revision. Assessment of a tax not made in accordance with law is an infringement of a fundamental right. No person can be deprived of his property otherwise than in accordance with law, vide *Niranjana Lal Bhargava Trust v. Nagar Mahapalika, Allahabad*.¹

Order of Second Appellate Court ambiguous—Can be got clarified by tax payer—See *M. P. Sugar Mills v. Kanpur Municipality*.³

High Court's power—Article 226 Constitution—As the High Court does not usurp the functions of a court of appeal, it cannot interfere with an order of a subordinate authority where it rests purely upon facts unless, of course, the order passed is perverse and the error amounts to a defect in the exercise of jurisdiction and then the High Court will interfere under Article 226 of Constitution, vide *Rameshwari Devi v. District Magistrate, Saharanpur*.²

Review—Not provided—In the analogous Section 164 of the U. P. Municipalities Act, review by the appellate court is provided in sub-section (2) of that section but under this Adhiniyam no review is provided and in place of review a more judicious right of second appeal has been provided under this section. Where the appellate authority had reviewed its order, the same was quashed by the High Court, vide *Rameshwari Devi v. District Magistrate, Saharanpur*.²

Remand—Can be made—There does not appear any restriction on the powers of the appellate authority in respect of an appeal because the Legislature has given complete freedom to the appellate authority and it is free to pass any order which it considers necessary in the interests of justice and as such a remand order can also be passed. For analogy see *H. S. Mills v. Dy. Commissioner, Kheri*.²

1. 1970 A. L. J. 332 (335) : 1970 A. W. R. 113.

2. A. I. R. 1960 Alld. 399 (402).

3. A. I. R. 1969 Alld. 393 (394) (D. B.).

4. 1970 A. W. R. (Journal) 2 (D. B.) : 1969 A. L. J. 909 (D. B.).

477. Costs of proceedings in appeal.—The costs of all proceedings in appeal under Section 472 before the Judge including those of arbitration under Section 474 and of valuation under Section 475 shall be payable by such parties in such proportion as the Judge shall direct and the amount thereof shall, if necessary, be recoverable, as if the same were due under a decree of a Court of small Causes under the Provincial Small Cause Courts Act, 1887.

478. Unappealed values and taxes and decisions on appeal to be final.—(1) Every annual value fixed under this Act against which no complaint is made as hereinbefore provided and the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and the decision of the Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under Section 476 and if such appeal is made the decision of the District Judge in such appeal shall be final.

(2) Effect shall be given by the Mukhya Nagar Adhikari to every decision of the said Judge or District Judge on any appeal against any such value or tax.

Appeals to the Judge and the District Judge

479. Appeals to the Judge.—In addition to any other appeals to the Judge provided under this Act, appeals shall lie to the Judge against the orders of the Mukhya Nagar Adhikari in the following cases, namely—

- (1) an order declining to remove a shaft or pipe under Section 249 ;
- (2) an order requiring a building to be set forward under Section 284 ;
- (3) an order requiring the owner or occupier to repair, protect or enclose a place found to be dangerous under Section 303 :

Provided that no such appeal shall lie unless it is filed within one month from the date of the order of the Mukhya Nagar Adhikari.

480. Appeal against demolition orders.—(1) On an appeal being made under Section 395 against a demolition order made under Section 393 the Judge may make such order either confirming or quashing or varying the order as he thinks fit, and he may if he thinks fit, accept from an appellant any such undertaking as might have been accepted by the Mukhya Nagar Adhikari and any undertaking so accepted by the Judge shall have the like effect as if it had been given to and accepted by the Mukhya Nagar Adhikari under Section 393 :

Provided that the Judge shall not accept from an appellant upon whom such a notice as is mentioned in sub-section (1) of Section 393 was served, an undertaking to carry out any work unless the appellant complied with the requirements of sub-section (2) of that section.

(2) An appeal shall lie to the District Judge from a decision of the Judge on an appeal under this section, within one month of such decision, when the annual value entered in the Mukhya Nagar Adhikari assessment book in accordance with the provisions of this Act, of the premises to which the demolition order appealed against wholly or partially relates, exceeds two thousand rupees.

(3) A decision passed by the Judge under this section if an appeal does not lie therefrom under sub-section (2), or if no appeal is filed, and if an appeal is filed, the decision of the District Judge in appeal, shall be final.

(4) Any order against which an appeal might be brought under this section shall, if no such appeal is brought, become operative on the expiration of the period of twenty-one days mentioned in Section 395, and shall be final and conclusive as to any matters which could have been raised on such an appeal, and any such order against which an appeal is brought shall if and so far as it is confirmed by the Judge, or the District Judge become operative as from the date of the final determination of the appeal.

(5) For the purposes of this section, the withdrawal of an appeal shall be deemed to be the final determination thereof, having the like effect as decision confirming the order, appealed against and, subject as aforesaid, an appeal shall be deemed to be finally determined on the date when the decision of the District Judge, is given, of in a case where no appeal is brought upon the expiration of the period within which to the District Judge, such an appeal might have been brought, or in a case where no appeal lies to the District Judge on the date when the decision of the Judge is given.

481. Appeals against decision of the Judge regarding payment of expenses for works executed.—(1) An appeal shall lie to the District Judge from a decision of the Judge, regarding the amount or payment of expenses for any work executed, when the amount of the claim in respect of which the decision is given exceeds two thousand rupees :

Provided that no such appeal shall be heard by the District Judge unless it is filed within one month from the date of the decision of the Judge.

(2) The decision of the Judge regarding the amount of payment of expenses for any work executed, if no appeal is filed under this section and, if an appeal is filed, the decision of the District Judge in such appeal shall be final.

(3) When an appeal is filed under sub-section (1) in respect of a decision regarding the amount or payment of expenses for any work executed, the Mukhya Nagar Adhikari shall defer proceedings for the recovery of the amount determined under the said section to be due pending the decision of the District Judge and, after the decision, shall proceed to recover only such amount, if any, as shall be thereby determined to be due.

Proceedings before Judge

482. Remedy of owner of building or land against occupier who prevents his complying with any provisions of this Act.—(1) If the owner of any building or land is prevented by the occupier thereof from complying with any provision of this Act or of any rule, regulation or bye-law or with any requisition made under this Act, or under any such rule, regulation or bye-law in respect of such building or land, the owner may apply to the Judge.

(2) The Judge, on receipt of any such application, may make a written order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with the said provision or requisition, or to vacate the premises temporarily if the said provision or requisition relates to any action under Section 331, involving the safety or convenience of such occupier, and may also, if he thinks fit, direct that the cost of such application and order be paid by the occupier.

(3) After eight days from the date of such order, it shall be incumbent on the said occupier to afford all such reasonable facilities to the owner for

the purpose aforesaid or to vacate the premises temporarily as shall be prescribed in the said order ; and in the event of his continued refusal so to do the owner shall be discharged, during the continuance of such refusal, from any liability which he would otherwise incur by reason of his failure to comply with the said provision or requisition.

(4) Nothing in this section shall affect the powers of the Mukhya Nagar Adhikari under any provision of this Act to cause any premises to be vacated.

483. Power to summon witnesses and compel production of documents.—The Judge shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely—

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of documents, and
- (c) issuing commissions for the examination of witnesses and any proceeding before Judge under this Chapter shall be deemed a "Judicial proceeding" within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

Comments

Section 193 Penal Code.

Punishment for false evidence—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1—A trial before a Court material is a judicial proceeding.

Explanation 2—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which

he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Section 228 Penal Code.

*Intentional insult or interruption to public servant sitting in judicial proceeding—*Whoever intentionally offers any insult, or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 196 Penal Code.

*Using evidence known to be false—*Whoever corruptly uses or attempts to use as true or genuine evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

484. Fees in proceedings before the Judge.—The State Government may, from time to time by notification in the official *Gazette*, prescribe what fee, if any, shall be paid—

- (a) on any application, appeal or reference made under this Act to the Judge, and
- (b) previous to the issue, in any inquiry or proceeding of the Judge under this Act, of any summons or other process :

Provided that the fees, if any, prescribed under clause (a) shall not, in cases in which the value of claim or subject-matter is capable of being estimated in money, exceed the fees for the time being levied, under the provisions of the [Court Fees Act, 1870]¹ in cases in which the value of the claim or subject-matter is of like amount.

(2) The State Government may from time to time by a like notification determine by what person any fees prescribed under clause (a) of sub-section (1) shall be payable.

(3) No application, appeal or reference shall be received by the Judge until the fee, if any, prescribed therefor under clause (a) of sub-section (1) has been paid.

485. Exemption of poor Persons from fees.—The Judge may, whenever he thinks fit, receive an application, appeal or reference made under this Act, by or on behalf of a poor person, and may issue process on behalf of any such person without payment or on a part payment of the fees prescribed under Section 484.

486. Repayment of half fees on settlement before hearing.—Whenever any application, appeal or reference made to the Judge under this Act, is settled by agreement of the parties before the hearing, half the amount of all the fees paid up to that time shall be repaid by the Judge to the parties by whom the same have been respectively paid.

Appointment of Magistrate

487. Appointment of a Magistrate of the First Class.—(1) The State Government may with the consent of the Mahapalika create one or more posts of Magistrate of the First Class for the trial of offences against this Act, or may appoint any person to such post and may also appoint such

1. Subs. by U. P. Act XXII of 1961.

ministerial officers or the court of any such Magistrate as it may think necessary :

Provided that notwithstanding the appointment of one or more Magistrates of the First Class under this section, it shall be open to the District Magistrate subject to the rules for the time being in force under Section 17 of the Code of Criminal Procedure, 1898, regulating the distribution of business in the Courts of Magistrates of the First Class to make such distribution of the work of trial of such offences and of all other work before the courts of the Magistrates (including any appointed under this section) as may appear to him most conducive to efficiency.

(2) Such Magistrate or Magistrates and their establishments shall be paid such salary, pension, leave allowances and other allowances as may, from time to time, be fixed by the State Government.

(3) The amounts of the salary and other allowances as fixed under subsection (2), together with all other incidental charges shall be reimbursed to the State Government by the Mahapalika which shall also pay to the State Government such contribution towards the pension, leave and other allowances of such Magistrate or Magistrates and their establishment as may from time to time be fixed by the State Government :

Provided that the State Government may, with the concurrence of the Mahapalika, direct that in lieu of the amounts payable under this section the Mahapalika shall pay to the State Government annually on such date as may be fixed by the State Government in this behalf such fixed sum as may be determined by the State Government in this behalf.

Comments

Salaried officer—A Magistrate appointed for trial of the Mahapalika cases under this section are salaried officer of the Mahapalika and they have thus pecuniary interest and personal interest in the prosecution side, i.e., Mahapalika and trials by them whether becomes illegal. Refer to Section 556 Cr. P. C. in this respect where there is no provision regarding Magistrates having pecuniary interests in the prosecution. Pecuniary interest, however, small would be a disqualification under Section 556 Cr. P. C. Personal interest is not limited to private interest only. It may well include official interest also, vide *Rameshwar Bhartiya v. State of Assam*¹. However, in the following cases² it was held that conviction by a Magistrate including a salaried officer of a Municipality is not bad under Section 556 Cr. P. C.

References to Magistrates

488. Reference to Magistrates.—A reference shall be made to a Magistrate of the First Class having jurisdiction within the limits of the City in the matter of the detention of a person suffering from dangerous disease in a public hospital under the rules.

489. Disposal of animals and articles of non-perishable nature seized under Section 431.—(1) Any animal and any article not of a

1. A. I. R. 1952 S. C. 405 (407).

2. (84) 10 Cal. 194 (195).

(81) 7 Cal. 322 (327).

perishable nature and any utensil or vessels seized under Section 435 shall be taken before a Magistrate of the First Class.

(2) If it shall appear to such Magistrate that any such animal or article is diseased, unsound or unwholesome or unfit for human consumption, as the case may be, or is not what it was represented to be or that such utensil or vessel is of such kind or in such state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human consumption, he may, and, if it is diseased, unsound, unwholesome or unfit for human consumption, he shall cause the same to be destroyed, at the charge of the person in whose possession it was at the time of its seizure, in such manner as to prevent the same being again exposed or hawked about for sale or used for consumption or for the preparation or manufacture of, or human for containing any such article as aforesaid.

490. Penalty for possessing food which appears to be diseased, unsound or unwholesome or unfit for human food.—In every case in which food, on being dealt with under Section 489, appears to the Magistrate to be diseased, unsound or unwholesome or unfit for human consumption, the owner thereof or the person in whose possession it was found, not being merely bailee or carrier thereof, shall on conviction, if in such case the provisions of Section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to five hundred rupees.

Section 273 Penal Code

Sale of noxious food or drink—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

491. Applications for summons to be refused if not applied for within a reasonable time.—In all prosecutions under Section 490 the Magistrate shall refuse to issue summons for the attendance of any person accused of an offence against such section, unless the summons is applied for within a reasonable time from the alleged date of the offence of which such person is accused.

Proceedings before Magistrates and the Sessions Courts

492. Cognizance of offences.—(1) An offence for the contravention of Section [112-C, Section 112-D or Section]¹ 417 shall be cognizable.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, all offences against this Act, or against any rule, regulation or bye-law, whether committed within or without the City, shall be cognizable by a Magistrate of the First Class having jurisdiction in the City and no such Magistrate shall be deemed to be incapable of taking cognizance of any such offence or of any offence against any enactment hereby repealed, by reason only of his being liable to pay any Mahapalika tax or of his being benefited by the Mahapalika Fund.

(3) Notwithstanding anything contained in Section 200 of the said Code, it shall not be necessary in respect of any offence against this Act or any rule, regulation or bye-law made thereunder, to examine the complainant when the complaint is presented in writing.

1. Subs. by U. P. Act XXI of 1964.

Comments

Section 200 Penal Code

Using as true such declaration knowing it to be false.—Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is in admissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 and 200.

493. Limitation of time within which complaints of offences punishable under this act shall be entertained.—No Magistrate shall take cognizance of any offence punishable under this Act, or any rule, regulation or bye-law, unless complaint of such offence is made before him—

- (a) within six months next after the date of the commission of such offence ; or
- (b) if such date is not known or the offence is a continuing one within six months next after the commission or discovery of such offence.

Comments

Continuing offence.—In the case of a continuing offence, where the offender is proved to have persisted in the offence, obviously the connection for such an offence must be on account of an offence which has already been committed. For such an offence, therefore, a second prosecution is necessary, vide *Emperor v. Parshottam*¹.

494. Power of Magistrate to hear cases in absence of accused.—If any person summoned to appear before a Magistrate to answer a charge of an offence punishable under this Act or any rule, regulation or bye-law, fails to appear at the time and place mentioned in the summons, and if service of summons is proved to the satisfaction of the Magistrate and no sufficient cause is shown for the non-appearance of such person the Magistrate may hear and determine the case in his absence.

495. Report of Public Analyst to Government.—Any document purporting to be a report under the hand of the Public Analyst to the Government of Uttar Pradesh upon any article duly submitted to him for analysis may be used as evidence of the facts therein stated in any inquiry or prosecution under this Act without proof thereof.

496. Complaint concerning nuisances.—(1) Any person who resides in the City may complain to a Magistrate of the First Class having jurisdiction therein of the existence of any nuisance or that in the exercise of any power conferred by Sections 231, 232, 249, 250, 251, 310 or 385 more than the least practicable nuisance has been created.

(2) Upon receipt of any such complaint, the Magistrate, after making such inquiry as he thinks necessary, may, if he sees fit, direct the Mukhya Nagar Adhikari—

- (a) to put in force any of the provisions of this Act or of any rule, regulation or bye-law or to take such measures as to such Magistrate shall seem practicable and reasonable for preventing, abating, diminishing or remedying such nuisance ;

1. A. I. R. 1935 All. 986(988) (D. B.).

- (b) to pay to the complainant such reasonable costs of and relating to the said complaint and order as the said Magistrate shall determine, inclusive of compensation for the complainant's loss of time in prosecuting such complaint.

(3) Subject to the provisions of Section 497 it shall be incumbent on the Mukhya Nagar Adhikari to obey every such order.

(4) Nothing in the Act contained shall interfere with the right of any person who may suffer injury or whose property may be injuriously affected by any act done in the exercise of any power conferred by Sections 231, 232, 249, 250, 251, 310, or 385 to recover the damages for the same.

497. Appeal to the Sessions Court from order passed under Section 496.—(1) An appeal shall lie to the Sessions Court from an order passed by a Magistrate under Section 496 within one month of the date thereof.

(2) The Sessions Court may, when disposing of an appeal under Sub-section (1), direct by whom and in what proportions, if any, the costs of the appeal are to be paid, and costs so directed to be paid may, on application to a Magistrate of the First Class having jurisdiction in the City, be recovered by him, in accordance with the direction of the Sessions Court, as if there were a fine imposed by himself.

(3) When an appeal has been preferred to the Sessions Court under this section, the Mukhya Nagar Adhikari shall defer action upon the order of the Magistrate until such appeal has been disposed of and shall thereupon forthwith give effect to the order passed in such appeal by the Sessions Court, or if the order of the Magistrate has not been disturbed by the Sessions Court, then to his order.

(4) The State Government may, after consulting the High Court, from time to time, make rules for regulating the admission of appeals under sub-section (1) and the procedure to be followed in the adjudication thereof.

Arrest of Offenders

498. Offenders against this Act may in certain cases be arrested by police officers.—(1) Any police officer may arrest any person who commits in his view any offence against this Act or against any rule, regulation or bye-law, if the name and address of such person be unknown to him, and if such person, on demand, declines to give his name and address or gives a name and address which such officer has reason to believe to be false.

(2) No person so arrested shall be detained in custody after his true name and address are ascertained or, without the order of a Magistrate, for any longer time, not exceeding twenty-four hours from the arrest, than is necessary for bringing him before a Magistrate competent to take cognizance of his offence.

Miscellaneous

499. Code of Civil Procedure to apply.—(1) Save as expressly provided by this Chapter, the provisions of the Code of Civil Procedure, 1908, relating to appeals from original decrees shall *mutatis mutandis* apply to appeals to the District Judge.

(2) All other matters for which no specific provision has been made under this Act shall be governed by such rules as the State Government may from time to time make after consultation with the High Court.

Comments

C. P. C. applies to the appeals to the Judge.—As the Sub-section is printed, it is apparant that the C. P. C. has been made applicable to the appeals to the District Judge but it is admitted that there appears to be some inadvertant mistake either in the printing (as the words "Judge and the" has been left from being printed before the words "District Judge") or in the drafting in respect of that word "Judge" because there is no sense in making the C. P. C. applicable to the Second Appellate Court, viz., the Disirct Judge under Section 47b and not to the First Appellate Court, viz., the Judge under Section 472 of this Adhiniyam. The words "the provisions of the C. P. C. relating to appeals from original decrees" also denote to the powers of the first appellate court.

More so, an appeal is a continuation of the original proceeding and that the powers exercisable by the appellate authority must be regarded as coextensive with those of the lower court, vide *Kanpur Municipality v. Additional Commissioner*¹. It is as such a true legal position that C. P. C. must be held to apply even to the appeals to the Judge. Also see the Head note "Additional evidence can be taken by the appellate court" under this section in this Act.

Additional evidence can be taken by the Appellate Court.—In the Section 160(2) analogous to Section 472 of the present Act, it was held by a Division Bench in the case of *Kanpur Municipality v. Additional Commissioner*¹, that such a power vests in the Appellate authority. This power is provided under Order 41 Rule 27 of the C. P. C. which again goes to show as well that C. P. C. should be held to apply to the appeals to the Judge. Also see *Rameshwar Deva v. District Magistrate, Saharanpur*², wherein it was held that the High Court while exercising jurisdiction under Art. 226 of the constitution cannot take additional evidence but an appellate authority can admit such evidence.

500. Limitation—(1) In computing the period of limitation prescribed for an appeal or application referred to in this Chapter, the provisions of Sections 5, 12 and 14 of the Indian Limitation Act, 1908,¹ shall, so far as may be, apply.

(2) When no time is prescribed by this Act for the presentation of an appeal, application or reference, such appeal or application shall be presented or reference shall be made within thirty days from the date of the order in respect of or against which the appeal, application or reference is presented or made.

Comments

Section 5 Limitation Act, 1963

Extension of prescribed period in certain cases—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, parctice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

1. A. I. R. 1969 Alld. 177 (D. B.).

2. A. I. R. 1960 Alld. 399(402).

3. See now corresponding sections of Limitations Act, 1963.

Section 12 Limitation Act, 1963

Exclusion of time in legal proceedings—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

Section 14 Limitation Act, 1963

Exclusion of time of proceeding bona fide in court without jurisdiction—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of order XXIII of the Code of Civil Procedure, 1908, the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule (1) of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other case of a like nature.

Explanation.—For the purposes of the section :

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted.
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding ;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

501. Execution of order of the Judge and District Judge.—(1) All orders of the Judge shall be executed in the same manner as if they were decrees of the Court of Small Causes passed under the Provincial Small Cause Courts Act, 1887.

(2) All orders of the District Judge shall be executed as if they were the decrees of his Court.

502. Criminal Procedure Code to apply to all inquiries and proceedings before Magistrate.—The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to all inquiries and proceedings under this Act before the Magistrate.

Comments

Burden of proof—Although there is nothing to provide that the provisions of the Evidence Act also applies to the matters covered under this Adhiniyam but this being a law of general application and has not been prohibited from being applied in its use in this Adhiniyam, the provisions of the Evidence Act shall be deemed to apply to this Adhiniyam. There are numerous cases under this Adhiniyam and also the Municipalities Act where this Evidence Act has been made to apply. The following are some of such cases. *Municipal Board, Saharanpur v. Kripa Ram*.¹

CHAPTER XXI

Recovery of Taxes and other Mahapalika Dues

503. Manner of recovering Mahapalika taxes.—A Mahapalika Tax may be recovered by the following processes in the manner prescribed by rules—

- (1) by presenting a bill,
- (2) by serving a written notice of demand,
- (3) by distraint and sale of a defaulter's movable property,
- (4) by the attachment and sale of a defaulter's immovable property,
- (5) in the case of octroi and toll, by the seizure and sale of goods and vehicles,
- (6) in the case of property tax by the attachment of rent due in respect of the property, and
- (7) by a suit.

Comments

Water disconnection. *Alok Banerjee v. Nagar Mahapalika Allahabad*.²

Comments

Scope—This is the section prescribing modes of recovery of "taxes" including octroi and Toll and not any other amount to which Mahapalika although may be entitled but which amount does not come within the definition of taxes. It provides the following mode of recoveries for.

1. A. I. R. 1965 Alld. 160.
2. 1971 A. W. R. 827.

Property tax.

(i) By attaching rent due in respect of the property in question (Sub-clause 6).

Octroi and Toll—

(i) by the seizure of goods and vehicles (Sub-clause 5) ;

(ii) by sale of such seized goods and vehicles (Sub-clause 5).

Other taxes—

(i) by presenting a bill (Sub-clause 1) ;

(ii) by serving a written notice of demand (Sub-clause 2) ;

(iii) by distraint and sale of a defaulter's moveable property (Sub-clause 3) ;

(iv) by attachment and sale of a defaulter's immovable property (Sub-clause 4),

(v) by a suit (Sub-clause 7).

Sections 504 to 519 lay down the procedure of the modes above prescribed. It is as such clear that neither there can be any other mode of recovery nor any procedure other than as laid down in Sections 503 to 519.

However, Section 520 as an enabling section, provides that any other dues, even other than a tax, may be recovered through the above procedure if such dues are prescribed by this Adhiniyam, rules or bye-laws to be recoverable as such.

Expenses and cost incurred by a Nagar Mahapalika in other proceedings while enforcing provisions of this Adhiniyam can be recovered in the manner laid down in Sections 521 to 530 of this Adhiniyam.

Water disconnection—Property taxes include water tax and mode of recovery of property taxes is laid down in Section 503 and 516 of this Adhiniyam. Section 516 being a specific and the only section prescribing the procedure for recovery of such property taxes, it is clear that a Mahapalika cannot arm itself either through any rule or bye-law with a power not prescribed in this section in this respect. Consequently, the mode of disconnection of water to coerce the tax payer for payment of such taxes is *ultra vires* and illegal.

Water disconnection cannot be even resorted to for recovery of any other taxes, toll, licence fee or any charges or cost due to the Mahapalika, vide *Alok Banerji v. Municipal Corporation, Allahabad*.¹

No rule or bye-law in contravention of or beyond the limits of these provisions laid down in these sections can be framed either by the State Government or by the Mahapalika itself.

Any rule or bye-law framed under the Municipalities Act for recovery of taxes by means of disconnecting water cannot be enforced under this Adhiniyam on the following grounds :

1. Published in the National Herald on 3-11-1971 (Trivedi, J.) Allahabad High Court.

- (a) There has been no section in the Municipalities Act parallel to this Section 503 of this Adhiniyam limiting the modes of recovery of taxes.
- (b) In absence of a "limiting section" in the Municipalities Act, any Rule effecting water disconnection could be framed but on the face of a limiting section in this Adhiniyam no such rule can be deemed to be a provision under this Adhiniyam in view of Section 577 hereunder.

504. Presentation of bill.—(1) As soon as a person becomes liable for the payment of any sum on account of a tax, other than octroi or toll or any similar tax payable upon immediate demand, the Mukhya Nagar Adhikari shall, with all convenient speed, cause a bill to be presented to the person so liable.

(2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable.

Comments

Analogous Law—Section 166 (1) (a) and (2) of the U. P. Municipalities Act.

Whether presentation of bill is mandatory for payment of tax—So far as the question of payment of tax is concerned, it is not obligatory on the Board to present a bill therefor because a tax becomes due and payable every year according to the rules and the liability of tax payer to pay tax has not been made dependant upon the Board presenting a bill to the tax payer. The liability arises the moment the tax payer has been assessed and the money becomes due upon the date on which the Municipality have declared by their rules that the tax is payable vide *Badrunnisan v. Municipal Board, Agra*.¹

505. Contents of bill.—Every such bill shall specify—

- (a) the period for which and the property, occupation, circumstances or thing in respect of which the sum is claimed, and
- (b) the liability or penalty enforceable in default of payment, and
- (c) the time (if any), within which an appeal may be preferred as provided in Section 472.

Comments

Analogous Law—Section 167 of the U. P. Municipality Act.

506. Notice of demand.—If the sum for which a bill has been presented as aforesaid is not paid into the office of the Mahapalika, or to a person empowered by a regulation to receive such payments, within fifteen days from the presentation thereof, the Mukhya Nagar Adhikari may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form prescribed by rule.

Comments

Analogous Law—Section 168 of the said Act.

507. Issue of warrant.—(1) If the person liable for the payment of the said sum does not, within fifteen days from the service of such notice of demand either—

- (a) pay the sum demanded in the notice, or
- (b) show cause to the satisfaction of the Mukhya Nagar Adhikari or of such officer as the Mahapalika by regulation may appoint in this behalf, why he should not pay the same,

such sum with all costs of the recovery may be recovered under a warrant caused to be issued by the Mahapalika in the form prescribed by rule, or to like effect, by distress and sale of the movable property of the defaulter.

(2) Every warrant issued under this section shall be signed by the Mukhya Nagar Adhikari, or by the officer referred to in clause (b) of sub-section (1).

Comments

Analogous Law—Section 169 of the U. P. Municipalities Act.

Distress warrant—Issue—When valid—Conditions precedent—Even if the warrant of distress were held to be, otherwise valid, it would be bad by reason of the invalidity of the bill of demand and the notice of demand which must be issued to a defaulter before the issue against him of a warrant of distress. In this case *Chhotey Lal v. Emperor*¹ the bill of demand and the notice of demand were signed by the Superintendent but there was nothing to show that there had been any delegation of power to him to sign bills of demand and notices of demand. It was thus held that the issue of warrant was invalid. It was further found doubtful that a Chairman, who had signed and issued the distress warrant was at all authorised by the Board to cause a warrant to be issued on his own initiative.

Distress warrant—Issue of—Can be challenged in Civil Court—There is nothing in the Municipalities Act which expressly or impliedly bars the Civil Court from considering the validity of the action being taken by the Municipal Board under Section 169. Section 169 does make a provision that a person from whom a demand is made may satisfy the Board that he is not liable to pay the amount demanded. But there are no further provisions under the Act by which a remedy could have been obtained against a wrongful order passed by the Board under Section 169. Section 164 and Section 321 taken together with Section 318 bar certain types of suits being taken to the Civil Court. These do not include suits to challenge decisions, given by the Board under Section 169. It appears to that since no appeal or any other remedy was provided in respect of orders passed by the Board or the newly authorised person in Section 169, the Legislature deliberately did not include any provision in this Act debarring the aggrieved person from approaching Civil Courts, vide *Municipal Board, Mathura v. Mansa*²

508. Forcible entry for purpose of executing warrant.—It shall be lawful for a Mahapalika Officer to whom a warrant issued under Section 507 is addressed, to break open, at any time between sunrise and sunset, any outer or inner door or window of a building, in order to make the distress directed in the warrant in the following circumstances and not otherwise :

- (a) if the warrant contains a special order authorizing him in this behalf;
- (b) if he has reasonable grounds for believing that the building contains property which is liable to seizure under the warrant, and

1. 1936 A. L. J. 427 : 37 Cr. L. J. 282 : 1936 All. 74.

2. A. I. R. 1951 All. 684 (635).

- (c) if, after notifying his authority and purpose and duly demanding admittance he cannot otherwise obtain admittance :

Provided that such officer shall not enter or break open the door of an apartment appropriated for women, until he has given any women therein an opportunity to withdraw.

Comments

Analogous law—Section 170 of the said Act.

509. Manner of executing warrant.—(1) It shall also be lawful for such officer to distrain, wherever it may be found, any movable property of the person therein named as defaulter, subject to the provisions of sub-sections (2) and (3).

- (2) The following property shall not be distrained :

- (a) the necessary wearing apparel and bedding of the defaulter, his wife and children ;
- (b) the tools of artisans ;
- (c) books of account ;
- (d) when the defaulter is an agriculturist, his implements of husbandry, seed-grain and such cattle as may be necessary to enable him to earn his livelihood.

(3) The distress shall not be excessive, that is to say, the property distrained shall be as nearby as possible equal in value to the amount recoverable under the warrant, and if any articles have been distrained which in the opinion of the person authorized under sub-section (2) of Section 507 to sign a warrant, should not have been so distrained, they shall forthwith be returned.

(4) The officer shall on seizing the property, forthwith make an inventory thereof, and shall before removing the same give to the person in possession thereof at the time of seizure a written notice in the form prescribed by rule that the said property will be sold as shall be specified in such notice.

Comments

Analogous law—Section 171 of the said Act.

510. Sale of goods under warrant and application of proceeds.—

(1) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody together with the amount to be recovered is likely to exceed its value, the Mukhya Nagar Adhikari or other officer by whom the warrant was signed, shall at once give notice to the person in whose possession the property was seized to the effect that it will be sold at once, and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

(2) If not sold at once under sub-section (1) the property seized or a sufficient portion thereof may, on the expiration of the time specified in the notice served by the officer executing the warrant, be sold by public auction under the orders of the Mahapalika unless the warrant is suspended by the person who signed it or the sum due from the defaulter is paid together with all costs incidental to the notice, warrant of distress and detention of the property.

(3) The surplus, if any, shall be forthwith credited to the Mahapalika Fund, notice of such credit being given at the same time to the person from whose possession the property was taken ; but if the same be claimed by written application made to the Mukhya Nagar Adhikari within one year from the date of the notice, a refund thereof shall be made to such person. Any sum not claimed within one year from the date of such notice shall be the property of the Mahapalika.

Comments

Analogous law—Section 172 of the said Act.

511. Procedure in case of execution against property outside the City.—(1) If no sufficient movable property belonging to a defaulter, or being upon the premises in respect of which he is assessed, can be found within the City, the District Magistrate may, on the application of the Mahapalika, issue his warrant to an officer of his court—

(a) for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the District Magistrate, or

(b) for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other District Magistrate exercising jurisdiction within Uttar Pradesh.

(2) In the case of action being taken under clause (b) of sub-section (1), the other District Magistrate shall endorse the warrant so issued, and cause it to be executed, and any amount recovered to be remitted to the District Magistrate issuing the warrant, who shall remit the same to the Mahapalika.

Comments

Analogous law—Section 173 of the said Act.

512. Recovery by attachment and sale of defaulter's immovable property.—In the circumstances mentioned in sub-section (1) of Section 507, the Mukhya Nagar Adhikari or the officer referred to in clause (b) of sub-section (1) of Section 507, may in lieu of issuing a warrant for distress and sale of movable property or where such warrant has been issued but the amount recoverable has not been recovered in whole or part issue a warrant for the attachment and sale of the defaulter's immovable property.

513. Warrant how to be executed in the case of immovable property.—(1) When a warrant is issued under Section 512 for the attachment and sale of immovable property, the attachment shall be made by an order prohibiting the defaulter from transferring or charging the property in any way, and all persons from taking any benefit from such transfer of charge, and declaring that the property will be sold unless the amount due, with the costs of recovery, are paid into the Mahapalika office within five days.

(2) Such order shall be proclaimed at some place on or adjacent to the property by beat of drum or other customary mode, and a copy of the order shall be fixed on a conspicuous part of the property and upon a conspicuous part of the office of the Mahapalika and also, when the property is land paying revenue to the State Government, in the office of the Collector of the district in which the land is situate.

(3) Any transfer of a charge on the property attached or of any interest therein made without the written permission of the Mukhya Nagar Adhikari shall be void as against all claims of the Mahapalika enforceable under the attachment.

514. Sale of immovable property.—(1) If the amount due is not paid within the period stated in sub-section (1) of Section 513 the immovable property or a sufficient portion thereof may be sold by public auction by order of the Mukhya Nagar Adhikari unless the warrant is suspended by him, or the sum due and the cost of recovery are paid by the defaulter and the Mukhya Nagar Adhikari shall apply the proceeds or such part thereof as shall be requisite in discharge of the sum due and of the costs of recovery.

(2) The surplus, if any, shall be forthwith credited to the Mahapalika Fund, but if the same be claimed by written application to the Mukhya Nagar Adhikari within six months from the date of the sale, a refund thereof shall be made to the defaulter and any surplus not claimed within six months as aforesaid shall be the property of the Mahapalika.

(3) Where the sum due and the costs of recovery are paid by the defaulter before a sale is effected, the attachment of immovable property shall be deemed to have been removed.

(4) Sales of immovable property under this section shall be held in the manner laid down in the rules.

(5) After sale of the immovable property as aforesaid, the Mukhya Nagar Adhikari shall put the person declared to be the purchaser in possession of the same and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers.

(6) It shall be lawful for the Mukhya Nagar Adhikari on behalf of the Mahapalika to offer a nominal bid in the case of any immovable property put up for sale, provided the previous approval of the Executive Committee is obtained to such bidding.

(7) The Mukhya Nagar Adhikari may direct the removal from the immovable property by any police officer or any person who obstruct him in any action taken in pursuance of sub-section (5) and may also use such force as is reasonably necessary to effect entry on the said property.

515. Special provisions in regard to non-payment of octroi or toll.—(1) In the case of non-payment of any octroi or any toll on demand by any person authorized in this behalf by the Mukhya Nagar Adhikari such person may seize any goods on which the octroi is chargeable, or any vehicle or animal on which the toll is chargeable or any part of the burden of such vehicle or animal which is in his opinion of sufficient value to satisfy the demand together with the expenses incidental to the seizure, detention and eventual sale if necessary, of such animal, goods, vehicle, burden or part thereof, and may detain the same. He shall thereupon give the person in possession of the vehicle, animal or thing seized, a list of the property together with a written notice.

(2) When any property seized is subject to speedy decay, or when the expense of keeping it together with the amount of octroi or toll chargeable is likely to exceed its value, the person seizing such property may inform the person in whose possession it was that it will be sold at once; and shall sell it or cause it to be sold accordingly unless the amount of octroi or toll demanded and the expenses incidental to the seizure be forthwith paid.

(3) If at any time before a sale has begun, the person from whose possession the property has been seized, tenders at the office of the Mahapalika the amount of all expenses incurred and of the octroi or toll payable, the Mukhya Nagar Adhikari shall forthwith deliver to him the property seized.

(4) If no such tender is made, the property seized may be sold, and the proceeds of such sale shall be applied in payment of such octroi, and the expenses incidental to the seizure, detention and sale.

(5) The surplus, if any, of the sale-proceeds shall be credited to the Mahapalika Fund, and may, on application made to the Mukhya Nagar Adhikari in writing within six months next after the sale, be paid to the person in whose possession the property was seized, and if no such application is made, shall become the property of the Mahapalika.

(6) The expenses incidental to the seizure of any property under this section shall be determined in such manner as the Mukhya Nagar Adhikari may specify in this behalf but shall not in any case exceed ten per cent. of the amount of octroi or toll payable.

516. Attachment of rent due.—(1) Where a bill for any sum due on account of any property tax is served upon an occupier of premises pursuant to sub-section (1) of Section 504, the Mukhya Nagar Adhikari may at the time of service or at any subsequent time cause to be served upon the occupier a notice requiring him to pay to the Mahapalika any rent due or falling due from him to the person primarily liable for the payment of the said tax to the extent necessary to satisfy the said sum due.

(2) Such notice shall operate as an attachment of the said rent until the said sum due on account of property-tax shall have been paid and satisfied, and the occupier shall be entitled to credit in account with the person to whom the said rent is due for any sum paid by him to the Mahapalika in pursuance of such notice.

(3) If the occupier shall fail to pay to the Mahapalika any rent due or falling due which he has been required to pay in pursuance of a notice served upon him as aforesaid the amount of such rent may be recovered from him by the Mukhya Nagar Adhikari as if it were an arrear of property tax under Section 504.

Comments

Scope of sub clause (2).—An occupier can also be made to pay the arrears of property taxes and such person has been made entitled to deduct that amount from the rents due from him to the person primarily liable to such arrears of taxes. See Section 108 (g) *Transfer of Property Act* and *Basant Lal v. Boora Ram*¹.

Section 179 of this Adhiniyam also provides so but it also lays down a limitation and it thus appears that if beyond that limitation an occupier pays any amount, he will in that event not liable to deduct such extra payments or cost of water and excess water charges.

In as much as Section 179 is a "limiting Section" it control this Section 516 and so nothing in excess can be realised and if excess realised then no deduction of such excess amount can be claimed, beyond the limits of this Section 179. The limits of the quantum of realisation of such taxes from an occupier as laid in Section 179 is as under :

| | |
|------------------------------------|--------------------------------------|
| Annual rent of the occupier | Amount recoverable from the occupier |
| Total rent of that whole building. | Total taxes on whole building. |

1. A. I. R. 1963 All. 568.

"Cost of water"—It is not covered in "Property taxes" and as such it cannot be recovered under Sections 503 to 519.

Excess water charges—It is also not covered in "Property Taxes" and as such it cannot also be recovered under the said sections.

Drainage Tax and Conservancy Tax—These taxes cannot be recovered under these sections unless so prescribed by Rules or Bye-laws in accordance with Section 520 of this Adhiniyam.

517. Defaulters may be sued for arrears, if necessary.—Instead of proceeding against a defaulter by distress, attachment and sale as hereinbefore provided, or after a defaulter shall have been so proceeded against unsuccessfully or with only partial success, any sum due or the balance of any sum due, as the case may be, by such defaulter, on account of a tax may be recovered from him by a suit in any Court of competent jurisdiction.

Comments

Analogous law—Section 176 of the U. P. Municipalities Act.

Scope—This section is not hit by the general section 226 of this Adhiniyam which bars civil suits. Instead it is an enabling section which provides for institution of civil suits including claims of Mahapalika for Octroi duty under this Adhiniyam and an order of the State Government made under Section 219 (analogous to Section 153 of the Municipalities Act) cannot legally exclude the right to recover any amount on account of unpaid octroi duty by a civil suit, vide *Union of India v. Nagar Mahapalika, Allahabad*¹.

Limitation—It is 12 years under Art. 132 old Limitation Act from the time when the money sent for becomes due as was held in *Badrunnisa v. Municipal Board, Agra*² in a case under Section 177, a similar provision of the Municipalities Act.

Prior notice—*Not essential*—Before filing a suit for recovery of arrears of taxes, no prior notice is necessary vide *Badrunnisan's case*².

Comments

Analogous law—Section 174 of the said Act.

Comments

Analogous law—Section 175 of the said Act.

518. Fees and costs.—Fees for—

(a) every notice issued under Section 506,

(b) every distress made under Section 509,

(c) the costs of maintaining any livestock seized under the said section, shall be chargeable at the rates respectively specified in such behalf in rules made by the State Government, and shall be included in the costs of recovery to be levied under Section 507.

519. No distress, attachment or sale made under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of an error, defect or want of form in the bill, notice, warrant of distress, inventory or other proceeding relating thereto.

1. 1971 A. W. R. 776(784) (F. B.)

2. 1939 A. W. R. 261 (262, 263).

520. Recovery of dues declared recoverable as tax. - Any Mahapalika dues declared by this Act or by rules or bye-law to be recoverable in the manner provided by this Chapter may be recovered by the Mukhya Nagar Adhikari in accordance as far as may be with the provisions of Sections 504 to 514 and 516 to 519 as if the amount due were a tax.

521. Recovery of expenses of removals by Mukhya Nagar Adhikari under certain sections.—(1) The expenses incurred by the Mukhya Nagar Adhikari in effective any removal under Section 296 or sub-section (3) of Section 302, or in the event of a written notice issued under sub-section (2) of Section 292 or sub-section (3) of Section 293 or Section 303 or sub-section (3) of Section 305 or sub-section (1) of Section 306, or Section 331 not being complied with, under Section 508, and all other expenses and charges specified in sub-section (2), if any, shall, subject to the provisions of sub-section (2), be recoverable by the sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be paid by the owner of the said materials.

(2) If the expenses of removal are in any case paid before the materials are sold, the Mukhya Nagar Adhikari shall restore the materials to the owner thereof, on his claiming the same at any time before they are sold or otherwise disposed of, and on his paying all other expenses, if any, incurred by the Mukhya Nagar Adhikari in respect thereof or in respect of the intended sale or disposal thereof and all such charges, if any, as the Mukhya Nagar Adhikari may fix for the storage of the materials.

(3) If the materials are not restored to the owner thereof under sub-section (2), they shall be sold by auction or otherwise disposed of as the Mukhya Nagar Adhikari thinks fit :

Provided that, if the materials are perishable, they may be sold or disposed of forthwith, and, if other than perishable, they shall be sold or disposed of as soon as conveniently may be after one month from the date of their removal whether the expenses of the removal and the charges, if any, for storage have in the meantime been paid or not and the proceeds, if any, of the sale or other disposal, shall after defraying therefrom the costs of the sale or other disposal, and, if necessary, of the removal and the charges for storage be paid to the credit of the Mahapalika Fund, and shall be the property of the Mahapalika.

522. Expenses recoverable under the Act to be payable on demand, and if not paid on demand may be recovered as arrear of property-tax.—(1) Whenever under this Act, or any rule, regulation or bye-law, the expenses of any work executed or of any measure taken or thing done by or under the order of the Mukhya Nagar Adhikari or of any Mahapalika officer empowered under Section 119 in this behalf are payable by any person, the same shall be payable on demand.

(2) If not paid on demand, the said expenses shall be recoverable by the Mukhya Nagar Adhikari subject to the provisions of sub-section (4) of this section and sub-section (3) of Section 481 by distress and sale of the movable property or attachment and sale of the immovable property of the defaulter, as if the amount thereof were a property-tax due by the said defaulter.

(3) If, when the Mukhya Nagar Adhikari demands payments of any expenses under sub-section (1), his right to demand the same or the amount of the demand is disputed, or if, in the case of expenses incurred by the Mukhya Nagar Adhikari in taking temporary measures under sub-section (2)

of Section 308, the necessity for such temporary measures is disputed, the Mukhya Nagar Adhikari shall refer the case for the determination of the Judge.

(4) Pending the Judge's decision the Mukhya Nagar Adhikari shall defer further proceedings for the recovery of the sum claimed by him, and after decision, shall, subject to the provisions of Section 481, proceed to recover only such amount, if any, as shall be thereby determined to be due.

523. If defaulter is owner of premises in respect of which expenses are payable, occupier to be also liable for payment thereof.—If the expenses referred to in Section 522 are due in respect of some work executed or thing done to, upon or in connexion with, some building or land or of some measure taken with respect to some building or land in respect of a private street and the defaulter is the owner of such building or land or of the premises fronting or adjoining such street or abutting thereon, as the case may be, the amount thereof may be demanded from any person who at any time, before the said expenses have been paid, occupied the said building, land or premises under the said owner and in the event of the said person failing to pay the same, they may be recovered by distress and sale of the movable property or the attachment and sale of the immovable property of the said person, as if the amount thereof were a property-tax due by him :

Provided that—

- (a) unless the said person neglects or refuses at the request of the Mukhya Nagar Adhikari truly to disclose the amount of the rent payable by him in respect of the said building or premises and the name and address of the person to whom the same is payable, the said person shall not be liable to pay on account of the said expenses any larger sum than, up to the time of demand, is payable by him to the owner on account of rent of the said building, land or premises ; but it shall rest upon the said person to prove that the amount of the expenses demanded of him is in excess of the sum payable by him to the owner ;
- (b) the said person shall be entitled to credit in account with the owner for any sum paid by or recovered from him on account of the said expenses ;
- (c) nothing in this section shall affect any agreement made between the said person and the owner of the building, land or premises in his occupation respecting the payment of the expenses of any such work, thing or measure as aforesaid.

524. Mukhya Nagar Adhikari may agree to receive payment of expenses in instalments.—Instead of recovering any such expenses as aforesaid in any manner hereinbefore provided, the Mukhya Nagar Adhikari may, if he thinks fit and with the approval of the Executive Committee, take an agreement from the person liable for payment thereof, to pay the same in instalments of such amounts and at such intervals as will secure the payment of the whole amount due; with interest thereon, at such rate not exceeding nine per cent per annum as the Executive Committee may fix from time to time, within a period of not more than five years.

525. Certain expenses may be declared to be improvement expenses.—(1) Any expenses incurred by the Mukhya Nagar Adhikari under

any provision of this Act in respect of any material or fittings supplied or work executed or thing done to, upon or in connexion with some building or land which are recoverable from the owner or occupier of such building or land may, subject to the regulations, be declared to be improvement expenses if the Mukhya Nagar Adhikari with the approval of the Mahapalika, thinks fit so to declare them, and on such declaration being made, such expenses, together with interest thereon payable under sub-section (2), shall be a charge on the premises in respect of which, or for the benefit of which the expenses have been incurred.

(2) Improvement expenses shall be recoverable in instalments of such amount not being less for any premises than twelve rupees per annum, and at such intervals as will suffice to discharge such expenses, together with interest thereon at such rate not exceeding six per cent per annum as the Executive Committee may fix from time to time, within such period not exceeding thirty years as the Mukhya Nagar Adhikari with the approval of the Mahapalika may in each case determine.

(3) The said instalments shall be payable by the occupier of the premises on which the expenses and interest thereon are so charged or, in the event of the said premises becoming unoccupied at any time before the expiration of the period fixed for the payment of such expenses or before the sum, with interest as aforesaid, are fully paid off, by the owner for the time being of the said premises, so long as the same continue to be unoccupied.

526. Proportion of improvement expenses may be deducted from rent.—(1) Where the occupier by whom any improvement expenses are paid holds the premises on which the expenses together with interest thereon are charged on rent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such expenses and interest thereon as aforesaid from the rent payable by him to his landlord.

(2) If the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the same deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof :

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

527. Redemption of charge for improvement expenses.—At any time before the expiration of the period for the payment of any improvement expenses together with interest thereon, the owner or occupier of the premises on which they are charged may redeem such charge by paying to the Mukhya Nagar Adhikari such part of the said expenses and such interest due, if any, as may not have been already paid or recovered.

528. Recovery of instalments due under Sections 524 and 525.—Any instalment payable under Section 524 or 525 which is not paid when the same becomes due, may be recovered by the Mukhya Nagar Adhikari by distress and sale of the movable property or the attachment and sale of immovable property of the person by whom it is due as if it were a property-tax due by the said person.

529. In default of owner the occupier of any premises may execute required work and recover expenses from the owner.—Whenever the owner of any building or land fails to execute any work which he is required to execute under this Act or under any rule, regulation or bye-law, the occupier, if any, of such building or land may with the approval of the Mukhya Nagar Adhikari execute the said work, and he shall be entitled to recover the reasonable expenses incurred by him in so doing from the owner and may without prejudice to any other right of recovery deduct the amount thereof from the rent which from time to time becomes due by him to the owner.

530. Persons liable for expenses or compensation may be sued for recovery thereof.—Instead of proceeding in any manner aforesaid for the recovery of any expenses or compensation of which the amount due has been ascertained as hereinbefore provided, or after such proceeding have been taken unsuccessfully or with only partial success, the sum due, or the balance of the sum due, as the case may be, may be recovered by a suit brought against the person liable for the same in any court of competent jurisdiction.

CHAPTER XXII

Control

531. Power of State Government to call for extracts from proceedings, etc.—(1) The State Government may at any time call upon the Mahapalika to furnish it with any extract from any proceedings of the Mahapalika, the Executive Committee, or any other Committee constituted under this Act or from any record under the control of the Mahapalika and with any statistics concerning or connected with the administration of this Act; and the Mahapalika shall furnish the same without unreasonable delay.

(2) The State Government may at any time call upon the Mukhya Nagar Adhikari to furnish it with any information, report, explanation or statistics concerning or connected with the executive administration of this Act and the Mukhya Nagar Adhikari shall furnish the same without unreasonable delay.

532 State Government's power to cause inspection to be made.—The State Government may depute any officer to inspect or examine any Mahapalika department, office, service, work or thing and to report thereon and any officer so deputed may, for the purposes of such inspection or examination, exercise all the powers conferred by Section 531 upon the State Government.

533. State Government's power to direct the taking of action.—If on receipt of any information or report obtained under Sections 531 or 532 or otherwise the State Government are of opinion—

- (a) that any duty imposed on any Mahapalika authority by or under this Act has not been performed or has been performed in an imperfect, inefficient or unsuitable manner, or
- (b) that adequate financial provision has not been made for the performance of any such duty,

the State Government may, by an order, direct the Mahapalika or the Mukhya Nagar Adhikari within a period to be specified in the order to make arrangements to their satisfaction for the proper performance of the duty, or to make financial provision to their satisfaction for the performance of the duty, as the case may be :

Provided that, unless in the opinion of the State Government the immediate execution of such order is for reasons to be recorded in writing necessary, the State Government shall, before making an order under this section, give the Mahapalika an opportunity of showing cause why such order should not be made.

534. State Government's power to appoint a person to take action in default at expense of Mahapalika.—(1) If within the period fixed by an order issued under Section 533, any action directed under that section has not been duly taken, the State Government may by order—

- (a) appoint some person to take the action so directed ;
- (b) fix the remuneration to be paid to him ; and
- (c) direct that such remuneration and the cost of taking such action shall be defrayed out of the Mahapalika fund, and, if necessary, that any one or more of the taxes authorized under Chapter IX shall be levied or increased, but not so as to exceed any maximum prescribed by that Chapter.

(2) For the purpose of taking the action directed as aforesaid the person appointed under sub-section (1) shall have power to make such contracts as are necessary, and may exercise any of the powers conferred on any Mahapalika authority by or under this Act and specified in this behalf in the order issued under sub-section (1), and shall be entitled to protection under this Act as if he were a Mahapalika authority.

(3) The State Government may, in addition to or instead of, directing the levy or increase of any of the said taxes, direct by notification that any sum of money which may in their opinion be required for giving effect to their orders be borrowed by debenture on the security of all or any of the said taxes at such rate or interest and upon such terms as to the time of repayment and otherwise as may be specified in the notification.

(4) The provisions of Sections 156 to 170 shall, as far as may be, apply to any loan raised in pursuance of this section.

535. Powers of State Government in case of emergency.—(1) In case of emergency the State Government may provide for the execution through such agency and in such manner as it may specify in its order of any work or the doing of any act which the Mahapalika or the Mukhya Nagar Adhikari with or without the sanction of the Mahapalika or the Executive Committee is empowered to execute or do and of which the immediate execution or doing is, in its opinion, necessary for the safety or protection of the public and may direct that the expenses of executing the work or doing the act shall be forthwith paid by the Mahapalika.

(2) If the expense is not so paid the State Government may make an order directing the person having the custody of the Mahapalika fund to pay the expense from such fund.

536. Submission of copies of resolutions to State Government.—The Mukhya Nagar Adhikari shall submit to the State Government, and if so directed by the State Government, the Prescribed Authority, copies of all resolutions of the Mahapalika, the Executive Committee, the Development Committee and of other committees, and joint committees and sub-committees of the Mahapalika.

537. Power of State Government to suspend action under this Act—If the State Government is of opinion that the execution of any resolution or order of the Mahapalika or of any other Mahapalika authority or of any other committee or joint committee or sub-committee or of any officer or servant of the Mahapalika or the doing of any act which is about to be done or is being done by or on behalf of the Mahapalika is in contravention of or in excess of the powers conferred by this Act or of any other law for the time being in force or has been passed or made in abuse of any such power or is likely to lead to a breach of the peace or to cause obstruction, injury or annoyance to the public or to any class or body of persons or danger to human life, health or safety or is prejudicial to public interest, the State Government may, by order in writing, suspend the execution of such resolution or order, or prohibit the doing of any such act.

(2) A copy of such order shall forthwith be sent to the Mahapalika by the State Government.

(3) The State Government may at any time, on representation by the Mahapalika or otherwise, revise, modify or revoke an order passed under sub-section (1).

Comments

Analogous Law—Section 34 of the U. P. Municipalities Act.

Resolution passed—No remedy with public against it—Only State can suspend action—The public has no right and no remedy to get the operation suspended of any resolution which has been passed by a Mahapalika. In order to avoid this situation, the Adhiniyam confers on the State Government supervisory power over the Mahapalika's actions as was in the Municipalities Act in Section 34, vide *Zahuruddin v. Chimman Lal*.¹

538. Power of State Government to dissolve Mahapalika in case of incompetency, persistent default or excess or abuse of power.—(1) If at any time upon representation made it appears to the State Government that the Mahapalika is not competent to perform or persistency makes default in the performance of the duties imposed upon it by or under this Act or any other law for the time being in force or exceeds or abuses more than once its powers, the State Government may, after having given the Mahapalika an opportunity to show cause why such order should not be made, by an order published with the reasons therefor in the official *Gazette* dissolve the Mahapalika.

(2) A copy of the order under sub-section (1) shall be laid, as soon as may be, before each House of the Uttar Pradesh Legislature.

(3) When a Mahapalika is dissolved under sub-section (1) the following consequences shall ensue :

(a) the Nagar Pramukh, the Upa Nagar Pramukh and all Sabhasads and Vishishta Sadasyas shall, on a date to be specified in the order, vacate their respective offices but without prejudice to the eligibility for re-election under clause (b) ;

(b) necessary elections shall be held as far as possible within three months but in any case within six months after the order of dissolution to reconstitute the Mahapalika in accordance, as far as may be, with the provisions of this Act relating to the first

constitution of the Mahapalika, and till then the Mukhya Nagar Adhikari shall carry on the routine work of the Mahapalika and the Committees mentioned in Section 5.

Comments

Analogous Law—Section 30 of the U. P. Municipalities Act.

539. Power of State Government to supersede Mahapalika.—(1) If after dissolution of the Mahapalika the reconstituted Mahapalika also appears to the State Government to be not competent to perform or to persistently make default in the performance of duties imposed upon it by or under this Act or any other law for the time being in force or to exceed or abuse its powers more than once, the State Government may, after having given the Mahapalika an opportunity to show cause why such order should not be made, by an order published with the reasons therefor in the official *Gazette* supersede the Mahapalika for a period of one year.

(2) When an order of supersession is made under sub-section (1), the following consequences shall ensue :

- (a) the Nagar Pramukh, the Upa Nagar Pramukh and all the Sabhasads and Vishishta Sadasyas shall, as from the date of the order of supersession, vacate their offices as such Nagar Pramukh, Upa Nagar Pramukh, Sabhasads and Vishishta Sadasyas ;
- (b) all the powers and duties of the Mahapalika, the Executive Committee, the Development Committee and other committees shall, during the period of supersession, be exercised and performed by such person as the State Government from time to time appoints in this behalf and such person shall be called the Administrator of the City ;
- (c) all property vested in the Mahapalika shall, during the period of supersession, vest in the State ;
- (d) the person appointed under clause (b), may delegate his power and duties to an individual or to a committee or sub-committee ;
- (e) all debts and obligations incurred, all contracts entered into and all matters and things to be done by, or for, the Mahapalika or the Administrator of the City before the reconstitution of the Mahapalika shall be deemed to have been incurred, entered into or to be done by, or for, the Mahapalika as reconstituted under sub-section (4) ;
- (f) every appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued or imposed by the Mahapalika or the Administrator of the City before the reconstitution of the Mahapalika under this section and not inconsistent with this Act, shall be deemed to have been respectively made, issued or imposed under the provisions of this Act and shall unless subsequently altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act, remain in force for the period, if any, for which it was so made, issued or imposed.

(3) The State Government may from time to time, after inquiry made, by an order published in the official *Gazette*, extend the period of supersession

with all the consequences aforesaid so however that the total extension does not in the aggregate exceed one year.

(4) Necessary elections shall be held in accordance, as far as may be, with the provisions of this Act for the first constitution of the Mahapalika to re-establish the Mahapalika on the expiration of the period specified in the order of supersession under sub-section (1) as continued from time to time by order under sub-section (3) :

Provided that the person appointed under clause (b) of sub-section (2) shall continue to exercise the powers and perform the duties of the Mahapalika, the Executive Committee, the Development Committee and other Committees until the first meeting of the Mahapalika as re-established shall have been held.

(5) A copy of the order under sub-section (1) shall be laid as soon as may be before each House of the Uttar Pradesh Legislature.

CHAPTER XXIII

Rules, Bye-laws and Regulations

540. Making of rules by State Government.—(1) In addition to the power conferred upon the State Government under the preceding Chapters of this Act to make rules the State Government may make rules to carry out the purposes of the Act and may also make model rules for the guidance of a Mahapalika in any matter connected with the carrying out of the provisions of this or any other enactment.

Explanation.—The power conferred by this sub-section includes the power to make regulating the holding of meetings of the Mahapalika and its Committees and the conduct of business at such meetings till bye-laws are framed under the Act for the purpose.

(2) The power of the State Government to make rules under this Act shall be subject to the condition of the rules being made after previous publication and of not taking effect until they have been published in the official *Gazette*.

(3) Any rule made by the State Government may be general for all Mahapalikas or may be special for any one or more Mahapalikas to be specified.

(4) All rules made under this Act shall be laid for not less than fourteen days before each House of the State Legislature as soon as they are made and shall be subject to such modifications as the Legislature may make during the session they are so laid.

Comments

Analogous Law—Sub-clause (2) and (3) of this Section are almost analogous to Section 300 of the U. P. Municipalities Act.

Rule making power with the State Government—In this Act, the State Government has been invested a large and extensive power in respect of making of rules under almost all the chapters of this Act :

Section 87—Chapter II—Rules regarding holding election, etc.

Section 113—Chapter IV—Rules regarding services of Municipal employees.

Section 124—Chapter V—Rules relating to the manner in which duties and powers of the Mahapalika and its authorities.

Section 138—Chapter VI—Rules relating to property of and contracts with Mahapalika.

Section 153—Chapter VII—Rules relating to funds, payments and accounts.

Section 171—Chapter VIII—Rules for establishment and investment in sinking fund and attachment of Mahapalika fund.

Section 219—Chapter IX—Rules regarding assessment, collection, and other matters (*See* Section 227 (2) (a) of this Adhiniyam).

Section 227—Chapter IX—Rules relating to assessment, collection and other matters relating to taxes, besides those enumerated in Section 219.

Section 262—Chapter X—Rules regarding constructions, maintenance etc., of drains and such other outlets.

Section 271—Chapter XI—Rules for maintenance, etc., of water supply.

Section 314—Chapter XII—Rules relating to streets.

Section 342—Chapter XIII—Rules providing for erection, alteration etc., of buildings.

Section 384—Chapter XIV—Rules for working of Land Acquisition Tribunal, improvement scheme, master plan, etc.

Section 420—Chapter XV—Rules for clearance, etc., of rubbish, nuisance, keeping of animals, etc.

Section 453—Chapter XVI—Rules for licences, etc.

Section 455—Chapter XVII—Rules for maintaining information of births and deaths.

Section 459—Chapter XVIII—Rules regarding compensations.

Section 540—Chapter XXIII—Rules for carrying out the purposes of this Act in general.

Previous publication—Always necessary—Sub-section (2) of this Section 540 makes obligatory for the State Government to make rules under this Act either for imposition of tax or any other matter in this Act after previous publication, as was also held in *Kedar Nath v. Municipal Board, Gorakhpur*,¹ which was a case under the analogous provisions of Section 300 of the U. P. Municipalities Act.

Whether appointment of an Authority need be made by the State Government through a Rule—Under the Municipalities Act, the State Government under Section 160 (2) has to prescribe an Appellate Authority for disposal of assessment appeals and the rule making power in this respect has been conferred on the State Government under Section 296 thereof. It was contended in *Kanpur Municipality v. Addl. Commissioner*² that in view of the two sections referred to

1. 1956 A. L. J. 198 : 1956 A. W. R. 141 (D. B.).

2. A. I. R. 1959 All. 177 (182) (D. B.).

above, the State Government could appoint the Appellate Authority by means of framing rules only and not otherwise. This contention was repelled and it was held that whenever the Legislature intended that certain thing has to be prescribed only by a rule framed under the rule making power of the State, it has explicitly said so as in Sections 119 (2) and 151 (2) thereof. In sub-section (2) of Section 160, the Legislature has not done so and this supports the conclusion that the State Government need not prescribe the appellate authority by means of a rule framed under the power given by Section 296 and may do so even under sub-section (2) of Section 160.

Void Rules—Illustrations.

Rule 3 (1) of U. P. Municipal Board Surcharge Rules—Void.—In a case where a President of the Municipal Board, Dibai, was alleged to have appointed a toll peon and paid him his salary and allowances and when the Examiner, Local Fund accounts, raised objections to that payment, the State Government ordered to recover from the president that amount under Rule 3 (1) of the U. P. Municipal Board Surcharge Rules, 1948. Later on in 1964, the said Rule was enacted in Section 81 of the said Act. In a writ petition the legality of those rules was challenged on the ground that there was no statutory provision in the said Municipalities Act for the enactment of those Rules and that Section 81 of the Act, having no retrospective effect could not apply in that case as at the time of the alleged payment Section 81 was not in force. The High Court accepted the contention and the proceedings for recovery of that Surcharge was quashed, vide *Sohan Lal v. District Magistrate*.¹

Scope.—The provisions of this Adhiniyam make it apparent that broadly speaking the Rule making powers rests with the State Government as laid under Section 540 of this Adhiniyam whereas the Bye-law making power has been given to the Mahapalika under Section 541 thereof for the matters enumerated therein and its proceduring has been laid down in Sections 542 to 546 with condition that it should be got approved by the State Government under Section 544 thereof and so also the Executive Committee has been authorised to frame regulations as provided under Section 548. But, however, residuary and overall powers regarding making of Bye-laws and Regulations has again been vested in the State Government in the circumstances mentioned in Section 549 thereof. See another case *Pooran Ghandra v. City Board, Mussorie*.²

Void Bye-Laws.—See this Headnote under Section 550 in this Book.

541. Bye-laws for what purpose to be made.—The Mahapalika may from time to time make Bye-laws, not inconsistent with this Act and the rules, with respect to the following matters, namely :

- (1) regulating, in any particular not specifically provided for in this Act or the rules, the construction, maintenance, protecting, flushing, cleansing and control of drains, ventilation-shafts or pipes, cess-pools, water-closets, privies, latrines, urinals, washing places, drainage works of every description, whether belonging to the Mahapalika or other persons, Mahapalika waterworks, private communication pipes, private streets and public streets ;
- (2) regulating all matters and things connected with supply and use of water ;

1. 1970 A. W. R. 546 : A. I. R. 1971 All. 137,

2. 1970 A. W. R. 864 (D. B.).

- (3) regulating the maintenance, supervision and use of public and private cart-stands and the levy of fees for the use of such of them as belong to the Mahapalika ;
- (4) prescribing the forms of notice under Sectionr 316 and 317, the information documents and plans to be furnished therewith in respect of different classes of structures of works, the manner in which the persons by whom notices shall be signed and the manner in which plans, sections, descriptions, structural drawings or structural calculations shall be drawn, given, prepared and signed ;
- (5) regulating the manner in which, the supervision under which, the agency through which, the conditions and restrictions under which the work of erecting or re erecting buildings of particular classes and any work such as is described in Section 317 shall be carried out ;
- (6) the structure of walls, foundations, roofs and chimneys, the number, width and position of staircases, the width of corridors and passages, the materials, dimensions and strength of floors and staircases and of all scantlings, girders, posts and columns of buildings, for securing stability and prevention of fires and the safety of the inmates in the event of fire and for purposes of health, either generally or with reference to the type of the structure and the use to which it is intended to be put ;
- (7) the construction of scaffolding for building operations to secure the safety of the operatives and of the general public ;
- (8) the provision and maintenance of sufficient open space, either external or internal, about buildings to secure a free circulation of air, and of other means for the adequate ventilation of buildings ;
- (9) the provision and maintenance of suitable means of access to buildings and preventing encroachment thereon ;
- (10) the provision and maintenance of house-gullies and service-passages ;
- (11) regulating the conditions on which frame buildings may be constructed ;
- (12) regulating the use of land as building sites, prescribing the minimum size of such sites, either generally or for specified areas and prescribing set-backs from the street margin for all or particular classes of buildings on specified streets or classes of streets of specified localities ;
- (13) regulating the height of structures generally or with reference to the materials of which they are constructed or the width of the streets on which the front or the areas in which they are situated or the purposes for which they are intended to be used ;
- (14) regulating the number and height above the ground or above the next lower storey or the storeys of which building may consist ;

- (15) prescribing the form of the completion certificates required under Section 329 and the manner in which and the person by whom it shall be signed and subscribed ;
- (16) regulating the intervals at which, the manner in which, the persons by whom buildings shall be periodically inspected under Section 330 ;
- (17) regulating the management, maintenance, control and use of dwellings intended for the poorer sections of the community vesting in the Mahapalika ;
- (18) prescribing the qualifications and experience of licensed surveyors, architects, engineers, structural designers, clerks of works and plumbers ;
- (19) regulating in any particular not specifically provided for in this Act conservancy and sanitation, the destruction of rodents and other vermin, preventive and remedial measures against mosquitoes, flies and other insect pests ;
- (20) the control and supervision of all premises used for any of the purposes mentioned in Section 438 and of all trades and manufactures carried thereon and the prescribing and regulating of the construction, dimensions, ventilation, lighting, cleansing, drainage and water-supply of any such premises ;
- (21) the inspection of milch-cattle, and prescribing and regulating the construction, dimensions, ventilation, lighting, cleansing, drainage and water-supply of cattle-sheds and dairies ;
- (22) securing the cleanliness of milk-stores, milk-shops, milk-vessels used by dairymen or milk-sellers for containing milk ;
- (23) regulating the sale of milk in the City, the protection of milk against contamination and the prevention of the sale of contaminated milk ;
- (24) requiring notice to be given whenever any milch animal is affected with any contagious disease and prescribing precautions to be taken for protecting milch-cattle and milk against infection or contamination ;
- (25) regulating the measures to be taken in the event of the outbreak of any disease among animals, which is communicable to man and the supply of information which will facilitate the taking of such measures ;
- (26) securing the efficient inspection of the markets and slaughter-houses and of shops in which articles intended for human food are kept or sold ;
- (27) the control and supervision of butchers carrying business within the City or at a Mahapalika slaughter-house without the City ;
- (28) regulating the use of any Mahapalika market building, market place or slaughter-houses or any part thereof ;
- (29) controlling and regulating the sanitary condition of markets and slaughter-houses and preventing the exercise of cruelty therein ;

- (30) the licensing of hand-carts, other than those exempted from taxation under Section 183, and the seizure and detention of any such hand-cart that has not been duly licensed ;
- (31) requiring notice to be given of the occurrence of cases of any infectious, epidemic or endemic disease, not being a dangerous disease, which may be specified and prescribing the precautions to be taken by persons suffering from, or exposed to infection from, any such disease ;
- (32) regulating the disposal of the dead and the maintenance of all places for the disposal of the dead in good order and in a safe sanitary condition, due regard being had to the religious usages of the several classes of the community ;
- (33) regulating the use of any place for the skinning and cutting up of the carcasses of animals ;
- (34) facilitating and securing complete and accurate registration of births and deaths ;
- (35) the registration of marriages ;
- (36) securing the protection of public markets, gardens, public parking places and open spaces vested in or under the control of the Mahapalika from injury, or misuse, regulating their management and the manner in which they may be used by the public and providing for the proper behaviour of persons in them ;
- (37) regulating the use of barbed-wire or other material for the fencing of land or premises abutting on any street, pathway or place which the public are entitled to use or frequent ;
- (38) regulating trade in rags, bones, or second-hand clothing, bedding or other similar articles including measures for disinfecting on import or before removal, sale or exposure for sale or use in any manufacturing process of any such article ;
- (39) regulating the holding of fairs and industrial exhibitions in the City ;
- (40) regulating and prohibiting the stocking of inflammable materials and of the lighting of fires in any specified portion of the City ;
- (41) fixing of fees for any licence, sanction or permission to be granted by or under this Act ;
- (42) regulating to charges for services rendered by any municipal authority ;
- (43) regulating admission to and use by members of the public of, Mahapalika hospitals, dispensaries, infirmaries, homes and similar institutions and the levy of fees therein ;
- (44) the protection of the property of the Mahapalika ;
- (45) regulating the inspection by members of the public of Mahapalika records and the fees to be charged before such inspection is allowed ;
- (46) regulating the grant of certified copies or extracts from Mahapalika records, and the fees chargeable for such copies of extracts ;

- (47) regulating the appointment by owners of building or land in her City who are not resident therein of agents residing in or near the City to act for such owners for all or any of the purposes of this Act or the rules, regulations or bye-laws ;
- (48) prohibition and regulation of advertisements ; and
- (49) carrying out generally the provisions and intentions of this Act.

Comments

Analogous law—Almost similar to Section 298 of the Municipalities Act.

Scope—This Adhiniyam provides a very vast number of aspects in which respect a Mahapalika can frame Bye-laws but the broad headings for different subjects have not been given as is given in the corresponding Section 298 of the Municipalities Act wherein 2 lists, under headings A to J, comprising of those subjects on which the Bye-laws can be made, are enumerated, e. g., building, drains, privies, cesspools, etc.

The power given to the Mahapalikas under this section in general have also been specifically given in respect of certain more subjects in the following section of this Adhiniyam besides the present Section 541 :—

Section 103 Chapter III—Bye-laws regarding holding of meetings of Mahapalika, Executive Committee, etc., along with its proceedings in details.

Bye-laws held invalid—In the similar Section 298-H(b) of the Municipality Act, provision has been made to “provide for the regulation or prohibition of any description of traffic in the streets, where such regulation or prohibition appears to the Board to be necessary”. Under the same section, the Municipality of Kairana made Bye-laws to the effect that “no loaded motor vehicle would enter into or ply within that Municipal limits without permission and certain fee for such motor vehicles was prescribed” but the same was held in *C. A. Singh v. State of U. P.*¹ as unsustainable under this clause (b) and also under clause (c) of that section or even under any clause of Section 128 thereof.

However, the imposition of such a fee cannot be unsustainable even under Section 293 of the U. P. Municipalities Act which provides levy of fees for use, otherwise than under a lease, of Municipal property, vide *C. A. Singh v. State of U. P.*¹

Where the Ghaziabad Municipality framed a Bye-law prohibiting any person from using any place within the Municipality for the preparation of ice unless certain conditions were complied with. The said prohibition was not restricted to persons preparing ice for purposes of selling the ice. It was so general that it amounted to a prohibition against any preparation of ice within the Municipality without complying with those conditions. A person who prepared ice on his own refrigerator at his own house, either for his own consumption or for any other use, was according to the natural and plain meaning of that Bye-law, hit by the prohibition contained in that Bye-law and would be thus committing an offence. It was held that such a Bye-law was unreasonable and patently uncertain in the sense that it was not reasonably

1. 1970 A. L. J. 249 (253).

related to the purpose for which the bye-law could be made, vide *Municipal Board v. Rizwan Beg.*¹ See another case *Rashid Ahmad v. Municipal Board, Kairana*² under the Head-note "Bye-law void under Article 13 (1)" in this section and "Bye-laws invalid—Illustrations" in Section 550 in this book.

Bye-laws must be certain—Bye laws are also included in the term 'law' as used in Article 13 of the Constitution whereunder certainty is particularly essential in framing rules or bye-laws creating offences, vide *Municipal Board, v. Rizwan Beg.*¹

Bye-laws held valid—Under Section 298 of the Municipalities Act, Bye-laws Nos. 3 (6) and 12 (a) were framed to the effect that no one would drive rickshaw without a licence therefor. When Nagar Mahapalika Adhiniyam was enforced, that bye-law was contended to continue by virtue of Section 571 (a) of this Adhiniyam because the same was neither superseded by another bye-law nor it was inconsistent with the provisions of the Adhiniyam. It was upheld that although there was nothing in the Adhiniyam which would completely correspond to Section 298 of the Municipalities Act, but in substance and spirit, the principles under-lying Section 298 of that Act have been incorporated in the Adhiniyam also in Section 541 and particularly under clause (41) where a Mahapalika can frame a bye-law fixing a fee for any licence, permission, sanction, etc., and also clause (31) of Section 114 regulating of traffic, etc., vide *Dalip Chand v. Lucknow Nagar Mahapalika*.³

Bye-law—Void under Article 13 (1) of Constitution—Where a Municipality framed bye-laws barring establishment of wholesale vegetable market and for the grant of a monopoly to a contractor to deal in wholesale transaction at the place fixed as a market and then refused application for carrying on business in vegetables in the Municipal area. It was held that it was more than reasonable restriction as contemplated by Article 19 (6) and so the bye-law was void under Article 13 (1) of Constitution, vide *Rashid Ahmad v. Municipal Board, Kairana*.²

Fees—Which is levied essentially for services rendered where element of *quid pro quo* exists.

Tax Which is not a payment for services rendered but is a compulsory exaction of money by public authority for public purposes, vide *Latham G. J.* in the case of *Matthews*.⁴

Distinction between Tax and Fee—The distinction between a tax and a licence fee has been decided by their Lordships of the Supreme Court in more than one case. In *Rati Lal Panchand v. State of Bombay*⁵, their Lordships of the Supreme Court have given the distinction as follows :

"A tax is in the nature of a compulsory exaction of money by a public authority for purposes, the payment of which is enforced by law. The other

1. A. I. R. 1964 Alld. 544 (546).
2. A. I. R. 1950 S. C. 163 (165).
3. A. I. R. 1964 Alld. 46 (48) (D. B.).
4. 60 C. L. R. 263 (276).
5. A. I. R. 1954 S. C. 338 : 1954 S. C. R. 1055.

characteristic of a tax is, that the imposition is made for public purpose to meet the general expenses of the state without reference to any special advantage to be conferred upon the payers of the tax.

Thus although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied for general public purposes. Tax is a common burden and the only return which the tax payer gets is participation in the common benefits of the State.

Fees are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of *quid pro quo* which is absent in a tax. In order that the collections made by the Government can rank as fees, there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services.

Thus two elements are essential in order that a payment may be regarded as a 'fee'. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place the amount collected must be earmarked to meet the expenses of the rendering these services and must not go to the general revenue of the State to be spent for general public purposes.

However, too much stress should not be laid on the presence or absence of what has been called the 'coercive' element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fees is always voluntary it being a matter of choice with individuals either to accept the service or not for which fees are to be paid."

Similar view was even earlier taken by the Supreme Court in *Commissioner, Hindu Religious Endowments, Madras v. L. T. Swamiar*.¹

The principle of '*quid pro quo*' was even recently held to be an essential element in respect of a 'fee' under the U. P. Municipalities Act by a Full Bench in *Municipal Board, Moradabad v. Gopi Chand*² following the decision of an earlier Full Bench case in *Durga Das Bhattacharya v. Municipal Board, Varanasi*³ confirmed by Supreme Court in *Nagar Mahapalika, Varanasi v. D. D. Bhattacharya*⁴ and in absence of any proof that the licensing fee, for running a workshop (wherein a 43 horse power motor was installed) had been levied by the Board in lieu of any particular services rendered commensurate with the amount charged and consequently that licence fee, and the bye-law framed by that Board were held invalid.

According to this decision of their Lordships it must be established before a fee can be justified that it was for some special services rendered or some special work done for the benefit of 'those from whom the payments are demanded.' It may be levied in consideration of some services and the third and most essential qualification of a fee is that it must be earmarked to meet

1. A. I. R. 1954 S. C. 282 (295).

2. 1968 A. W. R. 695 (F. B.).

3. A. I. R. 1962 All. 277 : 1962 A. W. R. (J.) 39 (1).

4. 1968 A. L. J. 926 (930) (S. C.) (The famous case of rickshaw licences).

the 'expenses of rendering these services and must not go to the general revenue of the said year and the authority should not spend it for general public purposes. It was so held in *Rajni Kant Verma v. State*¹ by the Allahabad High Court as well.

Their lordships drew a distinction between a licence fee and a tax in *Shri Biswa Nath Singh v. District Board of Ballia*² as follows :—

It is clear from a perusal of clause (k) of sub-section (2) of Section 174, U. P. District Boards Act that the licence fee contemplated by it is a fee which will only cover, more or less the actual and special expenses incurred by the Board in regulating the trade. It is well known that there is a basic difference between a tax and a licence fee. One of the main functions that Boards have to perform is to regulate specific trades.

For purposes of this regulation they have been given powers of imposing a licence fee. This licence fee can be levied only for the purpose of meeting the probable expenses for the regulation of a particular trade or business and not for the purpose of augmenting the general revenue.

There is thus a clear distinction between the taxation power which has been given to the Boards and the power of levying a licence fee and it is incumbent on Boards to bear this distinction in mind.

In another case *Lala Raj Kishore v. District Board of Saharanpur*,³ Chaturvedi J. has discussed this question at length and many of the cases of the Allahabad High Court and of other courts have been considered. In that case a writ of *mandamus* was issued to the District Board of Saharanpur commanding them not to enforce Bye-law No. 6 which had imposed a licence fee of Rs. 500/- on Sugar factories propelled by petrol, steam or electricity a fee of Rs. 100/- per year, on crushers propelled by petrol, steam or electricity, a fee of Rs. 100/-, on centrifugal machines propelled by engines and a fee of Rs. 50/- each on certain flour mills etc.

In the case of *Shyam Lal v. Firozabad Municipality*⁴ the Municipality of Firozabad levied a licence fee of Rs. 500/- per year on every brick kiln but the same was challenged on the ground that the Municipality did not incur any expenditure in this connection and that this licence fee was not justified. The High Court held the said tax or licence fee illegal. Licence fee levied by a Board for vehicles plying within the Municipal area for carrying bricks from the 'kiln' to the purchasers was held in *Saharanpur Municipality v. Jagdish Saran*⁵ to be a tax within the meaning of Section 128 of the Municipalities Act.

Exception—In a recent case it has been held that a fee, in absence of 'quid pro quo' (correlative with service in lieu thereof) can be settled not only by a bye-law but also by agreement with the parties (i. e., the persons using the Municipal land, etc.) and more importantly by public auction, vide *Notified Area v. C. Das D. Mal*.⁶

1. 1958 A. L. J. 56 (58).

2. A. I. R. 1953 Alld. 415 : 1953 A. L. J. 60.

3. A. I. R. 1954 Alld. 675 : 1954 A. L. J. 405.

4. A. I. R. 1956 Alld. 185 (186).

5. A. I. R. 1959 Alld. 519 (521) (D. B.).

6. 1971 A. L. J. 227 (231) (D. B.).

Water-tax—Whether a tax or a fee—It has been held to be a tax and not a fee in *Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur*¹, and followed in *K. S. W. Ltd. v. D. M., Bareilly*.²

Right to use Loud Speaker—Can be restricted by a Bye-law—It is true that Article 19 (1) (a) of the Constitution guarantees freedom of speech and expression. But the use of mechanical appliances is not guaranteed by Article 19 (1) (a). Use of mechanical instruments like loud-speakers and amplifiers is not covered by the guarantee of freedom of speech. Consequently it was held in *Rajni Kant Verma v. State*³ that a bye-law restricting the use of loud-speaker by means of levying a fee therefor does not infringe Article 19 (1) (a) of the Constitution. Dissenting with the view of the United States Supreme Court in *Sata v. New York*,⁴ reliance was placed on the majority view of another subsequent case of the Supreme Court of America, in *Kovacs v. Cooper*.⁵ The said bye-law was framed under Section 294, clause (M) of Part H of the Municipalities Act. However, under this Adhiniyam there does not appear any such similar provision.

542. Mukhya Nagar Adhikari to lay draft bye laws before the Mahapalika for its consideration.—It shall be the duty of the Mukhya Nagar Adhikari from time to time to lay before the Mahapalika for its consideration a draft of any bye-law which he shall think necessary or desirable for the furtherance of any purpose of this Act.

543. Hearing by Mahapalika of objections to proposed bye-laws.—No bye-law shall be made by the Mahapalika, unless—

- (a) a notice of the intention of the Mahapalika to take such bye-law into consideration on or after a date to be specified in the notice shall have been given in the official *Gazette* and in the Bulletin of the Mahapalika, if any, before such date ;
- (b) a printed copy of such bye-law shall have been kept at the chief Mahapalika office and made available for public inspection free of charge by any person desiring to persue the same at any reasonable time from the date of the notice given under clause (a) ;
- (c) printed copies of such bye-law shall have been delivered to any person requiring the same on payment of such fee for each copy as shall be fixed by the Mukhya Nagar Adhikari ;
- (d) all objections and suggestions which may be made in writing by any person with respect thereto before the date of the notice given under clause (a) shall have been considered by the Mahapalika.

544. Bye-laws to be confirmed by the State Government and published in the official Gazette.—(1) No bye-law made under Section 541 shall have any validity unless and until it is confirmed by the State Government.

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1. A. I. R. 1962 Alld. 83 (D. B.).
 2. 1971 A. L. J. 558 (562)..
 3. 1958 A. L. J. 56 (57).
 4. 92 Lawyers Edition, P. 1574.
 5. 93 Lawyers Edition, P. 513.

(2) The State Government may confirm a bye-law without modification or with such modifications as it deems fit.

(3) When any bye-law has been confirmed under sub-section (1) by the State Government it shall be published in the official *Gazette*, and thereupon shall have the force of law.

Comments

Analogous law—Section 301, U. P. Municipalities Act.

Compliance of this Section—Mandatory—Where a bye-law was framed by the Municipal Board, Lucknow, without complying with the provisions of the analogous Section 301 above it was held to be invalid, vide *S. Iqbal Singh v. Municipal Board*¹

545. Printed copies of bye-laws to be kept on sale.—(1) The Mukhya Nagar Adhikari shall cause all bye-laws from time to time in force to be printed, and shall cause printed copies thereof to be delivered to any person requiring the same, on payment of such fee for each copy, as he may fix.

(2) Printed copies of the bye-laws for the time being in force shall be kept for public inspection in some part of the municipal office to which the general public has access and in such other places, if any, like places of public resort, markets, slaughter-houses and other works or places affected thereby, as the Mukhya Nagar Adhikari thinks fit, and the said copies shall from time to time be renewed by the Mukhya Nagar Adhikari.

546. Modification and rescission of bye-laws by Mahapalika—(1) A Mahapalika may modify or rescind any bye-law made by it.

(2) The provisions of Sections 542, 543 and 544 shall *mutatis mutandis* apply to the modifications or rescission of a bye-law under sub-section (1).

547. State Government may modify or repeal bye-laws.—(1) If it shall at any time appear to the State Government that any bye-law should be modified or repealed either wholly or in part, it shall cause its reasons for such opinion to be communicated to the Mahapalika and prescribe a reasonable period within which the Mahapalika may make any representation with regard thereto which it shall think fit.

(2) After receipt and consideration of any such representation or, if in the meantime no such representation is received, after the expiry of the prescribed period, the State Government may at any time by notification in the official *Gazette*, modify or repeal such bye-law either wholly or in part.

(3) The modification or repeal of a bye-law under sub-section (2) shall take effect from such date as the State Government shall in the said notification direct or, if no such date is specified, from the date of the publication of the said notification in the official *Gazette*, except as to anything done or suffered or omitted to be done before such date.

(4) The said notification shall also be published in the Bulletin of the Mahapalika, if any.

1. A. I. R. 1959 All. 186 (189) (D. B.).

548. Regulations.—(1) The Executive Committee shall from time to time frame regulations not inconsistent with this Act and the rules and bye-laws but in consonance with any resolution that may be passed by the Mahapalika—

- (a) fixing the amount and the nature of the security to be furnished by any Mahapalika officer or servant from whom it may be deemed expedient to require security ;
- (b) regulating the grant of leave to Mahapalika officers and servants ;
- (c) determining the remuneration to be paid to the persons appointed to act for any of the said officers or servants during their absence on leave ;
- (d) authorizing the payment of travelling or conveyance allowance to the said officers and servants ;
- (e) regulating the period of service of all the said officers and servants ;
- (f) determining the conditions under which the said officers and servants, or any of them, shall on retirement or discharge receive pensions, gratuities or compassionate allowances, and under which the surviving spouse or children and, in the absence of the surviving spouse or children, the parents, brothers and sisters, if any, dependent on any of the said officers and servants, shall after their death, receive compassionate allowances and the amounts of such pensions, gratuities or compassionate allowances ;
- (g) authorizing the payment of contributions, at certain prescribed rates and subject to certain prescribed conditions, to any pension or provident fund which may, with the approval of the Executive Committee be established by the said officers and servants or to such provident fund, if any, as may be established by the Mahapalika for the benefit of the said officers and servant ;
- (h) prescribing the conditions under which and, the authority by whom, any officer or servant, may be permitted while on duty or during leave to perform a specified service or series of services for a private person or body or for a public body, including a local authority, or for the Government and to receive remuneration therefor ;
- (i) in general, prescribing any other conditions of service of the said officers and servants.

(2) The Executive Committee may also from time to time frame regulations not inconsistent with the provisions of this Act and the rules—

- (a) determining the standards of fitness of buildings for human habitation ;
- (b) regulating the declaration of expenses incurred by the Mukhya Nagar Adhikari under the provisions of this Act and the rules in respect of any materials or fittings supplied or work executed or thing done to, upon or in connection with some building or land which are recoverable from the owner or occupier to be improvement expenses ;

- (c) regulating the grant of permission by the Mukhya Nagar Adhikari for the construction of shops, ware-house, factories, huts or buildings designed for particular uses in any streets, portion of streets or localities specified in a declaration in force under Section 335.

(3) No regulation under sub-section (1) or under clause (a) of sub-section (2) shall have effect until it has been confirmed by the Mahapalika and, if made under clause (h) of sub-section (1), until it has in addition been confirmed by the State Government and in either case, has been published in the official *Gazette*.

(4) The Mahapalika or the State Government may decline to confirm a regulation when placed before it under sub-section (3) or confirm it without modification or after making such modifications as it may think fit.

549. State Government's power to make bye-laws and regulations.

—(1) If in respect of any matters specified in Section 541 the Mahapalika has failed to make any bye-law or if the bye-laws made by the Mahapalika are not, in the opinion of the State Government, adequate, the State Government may make bye-laws, providing for such matter to such extent as it may think fit.

(2) The provisions of Section 543 shall apply to the making of bye-laws under this section with the substitution of the words "State Government" for the words "Mahapalika" and the bye-laws shall have force of law upon their publication in the official *Gazette*.

(3) If any provision of a bye-law made under this section is repugnant to any provision of a bye-law made by the Mahapalika the bye-law under this section shall prevail and the bye-law made under Section 541 shall, to the extent of the repugnancy, be void.

(4) The State Government may, if it thinks fit by publication in the official *Gazette*, make regulations consistent with this Act and the rules and bye-laws in respect of matter referred to in clause (f) of sub-section (1) of Section 548.

550. Penalty for breach of rules, bye-laws or regulations.—In making rules, bye-laws or regulations, the Mahapalika or the Executive Committee, or the State Government, as the case may be, may provide that for any breach thereof the offender shall on conviction—

- (a) be punished with fine which may extend to five hundred rupees, and in the case of a continuing breach with fine which may extend to twenty rupees for every day during which the breach continues, after conviction for first breach ;
- (b) be punished with fine which may extend to twenty rupees for every day during which the breach continues, after receipt of written notice from the Mukhya Nagar Adhikari or any Mahapalika officer duly authorized in that behalf to discontinue the breach ;
- (c) in addition to the imposition of such fine be required to remedy the mischief so far as lies, in his power.

Comments

Analogous Law—Section 299, U. P. Municipalities Act.

Bye-law invalid—No prosecution can be launched for contravention of such bye-laws—See *Municipal Board, Moradabad v. Gopi Chand*.¹ See headnote "criminal court's jurisdiction" under Section 467 in this book.

Bye-laws invalid—Illustrations—Where the Municipal Board, Moradabad, framed a bye-law imposing 'licence fee' for running a workshop with electric motor was held to be invalid because the licencing fee was not a fee in lieu of services to be rendered and the *quid pro quo* was not an element of the said licence fee and consequently prosecution under this section was quashed, vide *Municipal Board, Moradabad v. Gopi Chand*.¹ See Headnotes "Bye-laws held invalid and "Bye-laws void under Article 13 (1) Constitution" under Section 541 in this book.

CHAPTER XXIV

Miscellaneous

Public Notices and Advertisements

551. Public notices how to be made known.—Whenever it is provided by or under this Act that public notice shall or may be given of anything, such public notice shall, in the absence of special provision to the contrary, be in writing under the signature of the Mukhya Nagar Adhikari or of a Mahpalika office empowered under the Act to give the same, and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing same by beat of drum, or by advertisement in the local newspapers, or by publication in the Bulletin of the Mahapalika or by any two or more of these means and by any other means that the Mukhya Nagar Adhikari shall think fit.

552. Advertisement how to be made.—Whenever it is provided by or under this Act that notice shall be given by advertisement in the local newspapers, or that a notification or any information shall be published in the local newspapers, such notice, notification or information shall be inserted, if practicable, in at least two newspapers in such language or languages as the Mahapalika may from time to time specify in this behalf published or circulating in the City :

Provided that where the Mahapalika has its own Bulletin the publication of the said notice in two consecutive issues of the Bulletin of the Mahapalika shall be deemed sufficient for the purposes of this section.

553. Consent etc., of Mahapalika, etc., may be provided by written document.—(1) Whenever under this Act or any rule, bye-law, regulation or order, the doing or the omitting to do anything or the validity of anything depends upon the consent, sanction, approval, concurrence, confirmation, declaration, opinion or satisfaction of—

(a) the Mahapalika, the Executive Committee, or any other committee ;
or

(b) the Mukhya Nagar Adhikari or any Mahapalika officer,

a written document signed as provided in sub-section (2) purporting to convey or set forth such consent, sanction, approval, concurrence, confirmation, declaration, opinion or satisfaction shall be sufficient evidence of such consent, sanction, approval, concurrence, confirmation, declaration, opinion or satisfaction.

(2) The written document referred to in sub-section (1) shall unless otherwise provided by or under this Act be signed—

- (a) when the authority concerned is the Mahapalika or the Executive Committee or any other Committee by the Mukhya Nagar Adhikari on behalf of such authority ;
- (b) when the authority concerned is the Mukhya Nagar Adhikari or any Mahapalika officer, the Mukhya Nagar Adhikari, or such Mahapalika officer, as the case may be.

Service of Notices etc.

554. **Notices and their service.**—(1) Notices, bills, schedules, summonses and other such documents required by this Act or by any rule, regulation or bye-law to be served upon or issued or presented or given to any person, shall be served, issued, presented or given by Mahapalika officers or servants or by other persons authorised by the Mukhya Nagar Adhikari in this behalf.

(2) When any notice, bill, schedule, summons or other such document is required by this Act, or by any rule, regulation or bye-law to be served upon or issued or presented to any person, such service, issue or presentation shall, except in the cases otherwise expressly provided for in sub-section (3), be effected—

- (a) by giving or tendering to such person the said notice, bill, schedule, summons or other document ; or
- (b) if such person is not found, by leaving the said notice, bill, schedule, summons, or other document at his last known place of abode in the City, or by giving or tendering the same to some adult member or servant of his family, or by leaving the same at his usual place of business, if any, by giving or tendering in the same to some adult employee, if any, of his at such place ; or
- (c) if such person does not reside in the City and his address elsewhere is known to the Mukhya Nagar Adhikari, by forwarding the said notice, bill, schedule, summons or other document to him by post under cover, bearing the said address ; or
- (d) if none of the means aforesaid be available, by causing the said notice, bill, schedule, summons or other document to be affixed on some conspicuous part of the building or land, if any, to which the same relates.

(3) When any notice, bill, schedule, summons or other such document is required by this Act, or by any rule, regulation or bye-law, to be served upon or issued or presented to the owner or occupier of any building or land, it shall not be necessary to name the owner or occupier therein, and the service, issue or presentation thereof shall be effected, not in accordance with the provisions of the last preceding sub-section, but as follows, namely—

- (a) by giving or tendering the said notice, bill, schedule, summons or other document to the owner or occupier or if there be more than one owner or occupier, to any one of the owners or occupiers of such building or land ;
 - (b) if the owner or occupier or no one of the owners or occupiers is found, by giving or tendering the said notice, bill, schedule, summons or other document to some adult member or servant of the family of the owner or occupier or of any of the owners or occupiers, or
 - (c) if none of the means aforesaid be available by causing the said notice, bill, schedule, summons or other document to be affixed on some conspicuous part of the building or land to which the same relates.
- (4) Whenever the person on whom any notice, bill, schedule, summons or other such document is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

(5) Nothing in this section applies to any summons issued under this Act by a Magistrate.

555. Signature on notices, etc., may be stamped.—(1) Every licence, written permission, notice, bill, schedule, summons or other document required by this Act or by any rule, regulation or bye-law to bear the signature of the Mukhya Nagar Adhikari or of any Mahapalika officer shall be deemed to be properly signed if it bears a facsimile of the signature of the Mukhya Nagar Adhikari or of such Mahapalika officer, as the case may be, stamped thereupon.

(2) Nothing in this section shall be deemed to apply to cheque drawn upon the Mahapalika Fund under any of the provisions of this Act, or to any deed of contract.

556. Power of Mukhya Nagar Adhikari to call for information as to ownership of premises.—(1) The Mukhya Nagar Adhikari may, in order to facilitate the service, issue, presentation or giving of any notice, bill, schedule, summons or other such document upon or to any person by written notice require the owner or occupier of any premises, or of any portion thereof to state in writing, within such period as the Mukhya Nagar Adhikari may specify in the notice, the nature of his interest therein and name and address of any other person having an interest therein, whether as free holder, mortgagee, lessee or otherwise ; so far as such name and address is known to him.

(2) Any person required by the Mukhya Nagar Adhikari in pursuance of sub-section (1) to give the Mukhya Nagar Adhikari any information shall be bound to comply with the same and to give true information to the best of his knowledge and belief.

Unauthorised Works

557. Work or thing done without written permission of the Mukhya Nagar Adhikari to be deemed unauthorized.—(1) If any work or thing requiring the written permission of the Mukhya Nagar Adhikari under any provision of this Act or any rule, regulation or bye-law is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the

Mukhya Nagar Adhikari, such work or thing shall be deemed to be unauthorized and, subject to any other provision of this Act, the Mukhya Nagar Adhikari may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisitions of the Mukhya Nagar Adhikari.

(2) If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Mukhya Nagar Adhikari may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be.

Enforcement of Orders to Execution of Work, etc.

558. Works, etc., which any person is required to execute may in certain cases be executed by Mukhya Nagar Adhikari at such person's cost.—(1) Subject to the provisions of this Act, and of the rules, bye-laws and regulations, when any requisition is made under any provision of this Act or of any rule, bye-law or regulation by written notice by the Mukhya Nagar Adhikari, or by any Mahapalika officer duly empowered in this behalf, a reasonable period shall be prescribed in such notice for carrying such requisition or order into effect, and if, within the period so prescribed, such requisition or order or any portion of such requisition or order is not complied with, the Mukhya Nagar Adhikari may take such measures or cause such work to be executed or such thing to be done as shall, in his opinion, be necessary for giving due effect to the requisition or order so made; and, unless it is in this Act otherwise expressly provided, the expenses thereof shall be paid by the person or by any one of the persons to whom such requisition or order was addressed.

(2) The Mukhya Nagar Adhikari may take any measure, execute any work or cause anything to be done under this section, whether or not the person who has failed to comply with the requisition or order is liable to punishment or has been prosecuted or sentenced to any punishment for such failure.

559. Supply of materials.—On the written request of any person who is required under any of the provisions of this Act, or of any rule, regulation or bye-law to supply any materials or fittings, the Mukhya Nagar Adhikari may, on such person's behalf, supply the necessary materials and fittings and cause the work to be done:

Provided that, where the provisions of Section 524 or 525 will not apply, a deposit shall first of all be made by the said person of a sum which will, in the opinion of the Mukhya Nagar Adhikari, suffice to cover the cost of the said materials, fittings and work.

Power of Entry and Inspection

560. Power of entry and inspection.—(1) The Mukhya Nagar Adhikari or any Mahapalika officer or servant authorized by him in this behalf may enter into or upon any premises, with or without assistants or workmen, which he is empowered by or under the provisions of this Act or the rules to enter or inspect or in order to make any inspection, search, survey, measurement, valuation or inquiry or to execute any work which is authorized by or under this Act or which it is necessary for any of the purposes, or in pursuance

of any of the provisions, of this Act, or of any rules, bye-laws or regulations thereunder to make or execute.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Mukhya Nagar Adhikari or any Mahapalika officer or servant authorized by him in this behalf shall have power to enter and inspect any place or article in the following cases, namely—

- (a) any stable, garage, coach-house or any place where any vehicle, boat or animal liable to tax is kept ;
- (b) any land whereon any Mahapalika drain has been or is proposed to be constructed—under Section 230 ;
- (c) any land belonging to any person for the purpose of emptying his own drain into a Mahapalika drain—under Sections 234, 236, 241 and 242 ;
- (d) any land whereon shafts or pipes for ventilating drains are required to be fixed—under Section 249 ;
- (e) drains, ventilators, shafts, pipes, cess-pools, latrines, urinals, bathing and washing places—under Section 255 ;
- (f) any land which provides access to any Mahapalika waterworks—under Section 264 ;
- (g) any premises which are suspected to have been used for any trade or keeping any article in contravention of Section 438 ;
- (h) any premises for the use of which a licence is required and has been granted under the provisions of this Act ;
- (i) any building during its erection or any work during its execution ;
- (j) any premises which are provided by the Mahapalika for the residence of Mahapalika officers and servants.

(3) The Mukhya Nagar Adhikari or such authorized person shall not use any force for the purpose of effecting any entry under sub section (1), unless—

- (i) such entry cannot otherwise be effected, and
- (ii) there is reason to believe that an offence is being or has been committed against any provisions of this Act or any rule or bye-law made thereunder.

561. Power of Mukhya Nagar Adhikari to enter on lands adjacent to works.—(1) The Mukhya Nagar Adhikari may enter upon any land adjoining or within one hundred yards of any works authorized by this Act or by any rule or bye-law made thereunder for the purpose of depositing upon such land any soil, gravelsand, lime, bricks, stone or other materials, or of obtaining access of such works, or for any other purpose connected with the carrying on of such works.

(2) The Mukhya Nagar Adhikari shall, before entering upon any land under sub-section (1) unless otherwise provided in this Act or any rule or bye-law made thereunder, give the owner and occupier (if any) three days' previous written notice of his intention to make such entry, and of the purpose thereof, and shall, if so required by the owner or occupier, set apart by sufficient fences so much of the land as may be required for the purpose mentioned in the said sub-section.

(3) The Mukhya Nagar Adhikari shall not be bound to make any payment, tender or deposit before entering upon any land under sub-section (1), but shall do as little damage as may be, and shall pay compensation to the owner and occupier (if any) of the land for such entry and for any temporary damage that may be done in consequence thereof, and shall also pay compensation to the said owner for any permanent damage resulting therefrom.

562. Time of making entry.—(1) No such entry shall be made after sunset and before sunrise :

Provided that in any case in which it has been expressly provided by or under this Act such entry may be made by day or night.

(2) Except as otherwise expressly provided by or under this Act, no building used as a human dwelling shall be entered except with the consent of the occupier thereof or without giving him at least six hours' notice in writing of the intended entry and, except when it is deemed inexpedient to mention the purpose thereof, of such purpose.

(3) When such premises may otherwise be entered without notice, sufficient notice shall be given in every instance to enable the inmates of any apartment appropriated to females to remove themselves.

(4) Due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(5) No claim shall lie against any person for compensation for any damage necessarily caused by an entry under sub-section (7) of section 438 or by the use of any force necessary for effecting such entry.

563. Prohibition of obstructing entry under Section 560 or Section 561.—No person shall, in any way, obstruct the Mukhya Nagar Adhikari in making any entry under Section 560, or Section 561 or any Mahapalika officer or other person accompanying the Mukhya Nagar Adhikari at his request or acting under his orders for the purposes of such entry.

Legal Proceedings

564. Provisions respecting institution, etc., of civil and criminal actions and obtaining legal advice.—(1) The Mukhya Nagar Adhikari may—

(a) take, or withdraw from proceedings against any person who is charged with—

(i) any offence against this Act or any rule, regulation or bye-law ;

(ii) any offence which affects or is likely to affect any property or interest of the Mahapalika or the due administration of this Act ;

(iii) committing any nuisance whatever ;

(b) compound any offence against Act or any rule, regulation or bye-law which under the law for the time being in force may legally be compounded.

(c) defend any election petition brought under the Act or any other proceeding relating to elections under the Act if he or the Mahapalika or any other Mahapalika authority is sued ; or

- (d) defend, admit or compromise any appeal against an annual value or tax brought under Section 472 ;
- (e) take, withdraw from or compromise, proceedings under sub-section (2) of Section 470, sub-sections (3) and (4) of Section 522 and Section 481 and for the recovery of expenses or compensation claimed to be due to the Mahapalika ;
- (f) withdraw from or compromise any claim for a sum not exceeding five hundred rupees against any person in respect of a penalty payable under a contract entered into with such person by the Mukhya Nagar Adhikari or, with the approval of the Executive Committee, any such claim for any sum exceeding five hundred rupees ;
- (g) defend any suit or other legal proceedings brought against the Mahapalika or against the Mukhya Nagar Adhikari or a Mahapalika officer or servant in respect of anything done or omitted to be done by them, respectively, in their official capacity ;
- (h) with the approval of the Executive Committee admit or compromise any claim, suit or legal proceeding brought against the Mahapalika or against the Mukhya Nagar Adhikari or a Mahapalika officer or servant in respect of anything done or omitted to be done as aforesaid ;
- (i) with the like approval, institute and prosecute any suit or withdraw from or compromise any suit or any claim, other than a claim of the description specified in clause (f), which has been instituted or made in the name of the Mahapalika or the Mukhya Nagar Adhikari ;
- (j) obtain and pay for such legal advice and assistance as he may, from time to time, think it necessary or expedient to obtain or as he may be desired by the Mahapalika or the Executive Committee to obtain, for any of the purposes mentioned in the foregoing clauses of this sub-section or for securing the exercise of discharge of any power or duty vesting in or imposed upon any Mahapalika authority or any Mahapalika officer or servant :

Provided that the Mukhya Nagar Adhikari shall not defend any suit or legal proceeding under clause (g) without first of all taking legal advice with regard thereto, and shall institute and prosecute any suit which the Mahapalika shall determine to have instituted and prosecuted.

Comments

Analogous Law—Somewhat similar to Section 315 of the U. P. Municipalities Act.

Order (under this section) compounding a matter—Whether appealable under Section 472—No—See *Municipal Board, Azamgarh v. Anand Brothers*¹.

General

565. Sabhasads, etc., to be deemed to be public servants.—⁽¹⁾ The Mukhya Nagar Adhikari and every Sabhasad or Vishishta Sadasya and

1. 1969 A. L. J. 458 (460) : 1969 A. W. R. (Journal) 5.

every Mahapalika officer or servant appointed under this Act, and every contractor or agent for the collection of any Mahapalika tax, fee or other sum due to the Mahapalika and every servant or other person employed by any such contractor or agent shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

(2) For the purposes of sub-section (1) the word "Government" in the definition of "Legal remuneration" in Section 161 of the Indian Penal Code shall be deemed to include the Mahapalika.

566. Duties of police officers.—It shall be the duty of every police officer—

- (a) to communicate without delay to the proper Mahapalika officer any information which he receives of the design to commit or of the commission of any offence under this Act or any rule, bye-law or regulation made under it ;
- (b) to assist the Mukhya Nagar Adhikari or any Mahapalika officer or servant, or any person to whom the Mukhya Nagar Adhikari has lawfully delegated powers reasonably demanding his aid for the lawful exercise of any power vesting in the Mukhya Nagar Adhikari or in such Mahapalika officer or servant or person under this Act, or any such rule, bye-law or regulation ;

and for all such purposes he shall have the same powers which he has in the exercise of his ordinary police duties.

567. Power of police officers to arrest persons.—(1) If any police officer sees any person committing an offence against any of the provisions of this Act, or of any rule, bye-law or regulation made under it, he shall, if the name and address of such person are unknown to him and if the said person on demand declines to give his name and address or gives a name and address which such officer has reason to believe to be false, arrest such person.

(2) No person arrested under sub-section (1) shall be detained in custody—

- (a) after his true name and address are ascertained, or
- (b) without the order of a Magistrate for any longer time not exceeding twenty-four hours from the hour of arrest, than is necessary for bringing him before a Magistrate.

568. Exercise of powers of police by Mahapalika servants.—The State Government may empower any Mahapalika officer or servant or any class of Mahapalika officers or servants to exercise the powers of a police officer for the purposes of this Act.

569. Informalities and errors in assessments, etc., not to be deemed to invalidate such assessment, etc.—(1) Any informality, clerical error, omission or other defects in any assessment made or any distress levied or attachment made or in any notice, bill, schedule, summons or other documents issued under this Act or under any rule, regulation or bye-law may at any time, as far as possible, be rectified

(2) No such informality, clerical error, omission or other defect shall be deemed to render the assessment, distress, attachment, notice, bill, schedule, summons or other document invalid or illegal if the provisions of this Act and of the rules, regulations or bye-laws have in substance and effect

been complied with, but any person who sustains any special damage by reason of any such informality, clerical error, omission or other defect shall be entitled to recover compensation for the same by suit in a court of competent jurisdiction.

570. Indemnity for acts done in good faith.—No suit, prosecution or other legal proceeding shall lie in respect of anything in good faith done or purported or intended to be done under this Act against the State Government, any Sabhasad, Vishishta Sadasya, Nagar Pramukh or against the Mukhya Nagar Adhikari, or any Mahapalika officer or servant or against person acting under and in accordance with the directions under this Act of the State Government, the Mahapalika, any Committee constituted under this Act, the Mukhya Nagar Adhikari, any Mahapalika officer or servant or of a Magistrate.

Comments

Good Faith—Definition—See Section 52 I. P. C.—It reads as under :—

“Nothing is said to be done in ‘good faith’ which is done or believed without due care and attention.”

Section 20 General Clauses Act—Also defines it as follows :—

“A thing shall be deemed to be done in ‘good faith’ where it is in fact done honestly whether it is done negligently or not.”

See the cases of *Abdul Wadood*¹, *Tadali v. Gaya Singh*², *Gaya Din*³, *Bhawoo Jivaji v. Mulji Dayal*⁴, *Shimbhu Narayan*⁵, *Bux Soo Meah Chowdry*.⁶

571. Protection of persons acting under this Act against suits.—
(1) No suit shall be instituted against the Mahapalika or against the Mukhya Nagar Adhikari, or against any Mahapalika officer or servant, in respect of any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act—

(a) until the expiration of two months next after notice in writing has been, in the case of the Mahapalika, left at the Mahapalika office and, in the case of the Mukhya Nagar Adhikari or of a Mahapalika officer or servant delivered to him or left at his office, stating with reasonable particularity the cause of action, the nature of the relief sought, the amount of compensation claimed, if any, and the name and place of abode of the intending plaintiff and of his attorney, advocate, pleader or agent, if any, for the purpose of such suit, nor

(b) unless it is commenced within six months next after the accrual of the cause of action :

Provided that nothing in this sub-section shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object

1. (1907) 9 Bom. L. R. 230 : 31 Bom. 293.

2. (1929) 57 Cal. 843.

3. (1934) 9 Luck. 517.

4. (1882) 12 Bom. 377 (393).

5. (1925) 45 Alld. 495.

6. A. I. R. 1938 Rangoon 350 : (1938) 39 Cr. L. J. 985.

would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding.

(2) At the trial of any such suit—

- (a) the plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid ;
- (b) the claim, if it be for damages, shall be dismissed if tender of sufficient amends shall have been made before the suit was instituted or if, after the institution of the suit, a sufficient sum or money is paid into Court with costs.

(3) When the defendant in any such suit is a Mahapalika officer or servant, payment of sum or of any part of any sum payable by him in, or in consequence of the suit, whether in respect of costs, charges, expenses, compensation for damages or otherwise, may be made, with the previous sanction of the Executive Committee from the Mahapalika Fund.

Comments

Analogous law—Section 326, Municipalities Act.

Defamatory action or action taken not in good faith—Notice still necessary—Motive not important—Whenever an act is done by a person professing or purporting to act in his official capacity on behalf of the Mahapalika, notice to that person under this section is *mandatory* and the motive with which the act was done is totally immaterial, vide *Habibur Razzaq v. Ram Swarup*¹, *B. S. Gupta v. Shambhu Dayal*.²

Limitation—6 months from the accrual of cause of complaint—When arises—Where a suit for declaration that the notices issued by the Medical Officer of the Municipal Board, Bindrahan, were illegal and beyond the scope of Section 269 thereof (analogous to Section 405 of this Adhiniyam) and for a perpetual injunction restraining the Board from issuing such notices in future and from realising the amount of certain bills and other bills in pursuance of such impugned notices, it was held that limitation was of 6 months which started from the date the impugned notices were served on the plaintiff, vide *Govind Deoji v. Municipal Board*.³ In the case of *Habibur Razzaq v. Ram Swarup*¹ where the plaintiff was prosecuted and was ultimately acquitted and had then filed suit for malicious prosecution after giving notice it was held that the suit was barred having not been filed within 6 months from the date of acquittal which was the date of the accrual of cause of action.

Where the plaintiff was dismissed from the employment of the Board, the cause of action accrued to him the moment the resolution of the Board was communicated to him, vide *Sita Ram Goul v. Municipal Board, Kanpur*.⁴

Where a bye-law was required to be declared as invalid and a prayer for permanent injunction restraining the Municipal Board from taking proceedings for attachment or sale for the recovery of the amount in question, it was

1. 1934 A. L. J. 1149 (1150) (D. B.) : 4 A. W. R. 884 : 152 I. C. 393 : A. I. R. 1935 All. 51.

2. 1930 A. L. J. 1080 : 1930 All. 704.

3. 1937 A. L. J. 1358 (1361) : 1933 All. 110 : 174 I. C. 445.

4. 1959 A. L. J. 106 (113) (S. C.) : A. I. R. 1958 S. C. 1036.

held that the limitation of 6 months could be reckoned from any day as the cause of action was a recurring one, vide *Jagannath v. Municipal Board, Sonri*¹ wherein reliance was placed on *Ambika Charan v. Satish Chandra*.²

Suit for malicious prosecution against Chairman—Section applies—Where the plaintiff was the head clerk of the Municipal Board and the Chairman lodged a report with the police against the plaintiff for embezzlement and the prosecution was launched. Sessions Judge convicted the plaintiff but the High Court acquitted him. Plaintiff was held to be entitled to maintain action for malicious prosecution against the Chairman and that the analogous Section 326 did apply to it, vide *Habibur Razzaq v. Ram Swarup*.³

Exclusion of time spent in departmental appeals—Not allowed—The departmental enquiries even though they culminate in decisions on appeals or revisions can not be equated with proceedings before the courts of law, vide *U. P. State v. Mohd. Nooh*,⁴ *Sita Ram Goel v. Municipal Board, Kanpur*⁵ and such time spent in such departmental appeals cannot be excluded from the period of limitation prescribed in this section.

Fees amounting to tax challenged—Civil suit not lies—Where a Municipal Board levied licence fee on bullock carts which were engaged in bringing bricks from the kiln to the purchasers within the Municipal limit it was held to tantamount a tax as was imposable under Section 125 of the Municipalities Act and that the adoption of the method for collection of the tax in the form of licence fee could not make it any the less a tax and as such the suit for perpetual injunction with a prayer for the recovery of the sums already recovered as licence fee by the Municipality was hit by Sections 160 and 164 Municipalities Act and was barred, vide *Saharanpur Municipality v. Jagdish Saran*.⁶ In this case, an earlier decision *Brij Mohan Lal v. Emperor*⁷ was distinguished.

Recovery of unpaid salary of the employee—Limitation—Runs from the date of first refusal and not from any subsequent refusal—In *Barwari Lal v. Municipal Board, Gawalpore*,⁸ it was held that when once limitation had begun to run, the mere fact that the plaintiff made another attempt to get the Municipal Board to alter their decision would not have the effect of stopping it or giving it a fresh start of limitation. Reliance was placed on *Abdul Wahid v. The Municipal Board*.⁹ It is thus clear that such suits are maintainable if brought within the period of limitation.

Recovery of octroi duty liable to be refunded under Rules—Tortious act—Limitation—A legal duty is laid upon a Municipal Board in virtue of the Rule relating to refund of octroi duty. A breach of a legal duty is a tort and gives

1. 1939 A. L. J. 168 (D. B.).

2. 2 C. W. N. 689.

3. 1934 A. L. J. 1149 (1150) (D. B.) : 4 A. W. R. 884 : 152 I. C. 393 : A. I. R. 1935 Alld. 51.

4. 1923 A. L. J. 161.

5. A. I. R. 1958 S. C. 1036 : 1959 A. L. J. 106 (113) (S. C.).

6. A. I. R. 1939 Alld, 519 (522).

7. A. I. R. 1934 Alld. 497 : 1934 A. L. J. 244 : 149 I. C. 11.

8. 1924 A. L. J. 23 (24).

9. 1923 A. L. J. 161.

rise to an action. The suit would be in reality asking for damages by way of reparation for the tortious act committed by the defendant Board and in that view as well the suit was held in *Makhan Lal v. Municipal Board of Agra*¹, one of the suits described in Section 326 Municipalities Act and the limitation would be 6 months.

Recovery of amount illegally deducted from the bill of a contractor—Limitation runs from refusal—Where under the orders of the Board, a contractor built certain constructions but at the time of checking, certain amount was deducted from the bill refusing to pay the deducted amount. It was held that limitation started from the date of that refusal and the provisions of Section 326 of the Municipalities Act did apply to it, vide *Abdul Wahid v. Municipal Board, Allahabad*.²

Suit for injunction along with declaration of title—Notice given but suit filed within 2 months of notice—Suit not maintainable—See *Municipal Board, Benaras v. Gajadhar*³ wherein the suit was held premature because the suit was not a suit in which the only relief claimed was an injunction.

Mahapalika—Entrusting work to State Government—Employee on suffering injuries claiming damages—Who is liable—Workman's compensation Act—Where a project for the electrification of a Municipal town was being executed by the State Government, an employee of the State received injuries resulting in permanent partial disability. It was held that under the Workmen's Compensation Act, it is immaterial whether the employer State was working for itself or on behalf of the Municipality as its agent. In such a case, the Board being not the employer is not liable to pay compensation, vide *Almora Municipality v. Jasod Singh*.⁴

Suits on contract—Notice still necessary—Where a suit was filed for recovery of a sum due from the Board for the work done by the plaintiff on the basis of a contract between him and the Board when the latter had refused to pay the same along with certain security money and interest, it was held by a Division Bench in a case *Ram Narain v. Municipal Board, Multa*⁵ arising under the analogous Section 326 of the Municipalities Act that suit of such a nature was not covered under that section as the law in that respect had been concluded by a Full Bench dissenting with the old case law in the case of *District Board, Allahabad v. Behari Lal*⁶ wherein another analogous provision as contained in Section 192 of the District Boards Act was being considered. However, the Full Bench cases of *Dargahi Lal Nigam v. Cawnpore Municipal Board*⁷ and *Ahmad Raza v. Municipal Board, Allahabad*⁸ held that notice is necessary even in suits on contracts and torts.

Notice not essential—Suit for injunction—Relief of declaration of title when unnecessary—Where a Municipal Board issued a notice to the plaintiff for removal of a structure and the plaintiff brought the suit for injunction although incidentally the plaintiff contended that the Board was not entitled to issue a

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1. 1919 A. L. J. 180 (186, 187).
 2. 1923 A. L. J. 161 (162).
 3. 1918 A. L. J. 793.
 4. A. I. R. 1960 Alld. 468 (469).
 5. 1938 A. L. J. 894 (897) (D. B.).
 6. 54 Indian Appeals 338 : A. I. R. 1938 Alld. 540 : I. L. R. 1938 Alld. 823.
 7. 1952 A. L. J. 122 (F. B.).
 8. 1952 A. L. J. 223 (F. B.).

notice and that the notice was invalid as well. The plaintiff owned the property there. It was held that the contention of the plaintiff that the Board was not entitled to issue notice was only a ground for supporting the prayer for injunction. It was also held that it was not necessary for the plaintiff to seek a separate declaration of their title or the invalidity of the notices issued as these points arise incidentally and the court has to determine it to adjudicate on the relief of injunction, vide *Muslim Waqf Board v. Municipal Board*.¹

Notice not required—Notice is thus not required not in all suits but in which suits the relief is for injunction and its object would be “defeated” by the giving of the notice or the postponement of the commencement of the suit, vide *H. H. Rehman v. Municipal Board, Bijore*.² Distinction between “defeated” and “inconvenience”, is quite clear in *Haji Ahnisi Razvi v. Municipal Board, Allahabad*³ wherein it was held that suit for injunction to restrain the Board from prohibiting slaughter was not such an injunction suit wherein the notice was not essential.

Where suit relates to an act which is ‘threatened to be done in future’ and not ‘an act done or purporting to have been done’ relates, vide *Municipal Board, Mathura v. Dr. Radha Ballabh Pathak*.⁴ But also see *Sawan Mal v. Union of India*⁵, and *Union of India v. Baij Nath Rai*.⁶

Where suit is in fact for injunction but prayer for declaration was incidentally made although not necessary, vide *Muslim Waqf Board v. Municipal Board*.¹

Mahapalika—Liability for Damages—Yes—A corporation is liable to be sued for any tort provided that—

- (1) it is a tort in respect of which an action would lie against a private individual ;
- (2) the person by whom the tort is actually committed in acting within the scope of his authority and in the course of his employment as agent of the corporation ;
- (3) the act complained of is not one which the corporation would not, in any circumstances, be authorised by its constitution to commit, vide *Jokhu v. Municipal Board, Benaras*.⁷

Also see Head-note “Effect of non-compliance—Mahapalika is liable to pay damages” under section 308 in this commentary.

Malice of Mahapalika—May be presumed—Although it is not essential in tort—If any thing is done without due care and caution, malice may be presumed in law. Except in the case of an action for malicious prosecution, evil motive is not an essential ingredient in tort, but its presence may defeat a claim of privilege, vide *Jokhu v. Municipal Board, Benaras*.⁷

1. A. I. R. 1960 M. P. 249 (250).

2. 1971 A. L. J. 352 (355),

3. 1952 A. L. J. 223 (F. B.).

4. I. L. R. 1949 All. 651 (653).

5. 1970 A. L. J. 938.

6. 1970 A. L. J. 1114.

7. 1937 A. L. J. 1286 (1290) : 1937 A. W. R. 1135 : 173 I. C. 868 : 1938 All. 66.

Refund of taxes illegally recovered—Suit lies—A suit for remission or refund of certain house and water taxes charged by a Municipal Board for a period during which the plaintiff alleges the premises to have remained vacant is not barred. Ordinarily a suit for refund of money is a suit of civil nature and would be cognisable by a civil court under Section 9 of the Civil Procedure Code unless the claim is barred by a specific provision of law. It was held in *Munna Lal v. Municipal Board, Cawnpore*¹, that such a suit is not barred under Section 164 of the Municipalities Act analogous to Section 226 of Nagar Mahapalika Act. In another case *Jokhu v. Municipal Board, Benaras*², it was again held that where a tax is illegally imposed and recovered, suit for its refund lies. In that case, the Municipal Board could levy water tax on houses within a radius of 600 feet from the nearest stand pipe still the plaintiff, whose house was beyond that limit and no tax could be imposed thereupon, was compelled to pay that tax through attachment proceedings and his suit was decreed and Section 164 of the Municipalities Act was held not to bar such suit. But where a Municipalities had contended that it could impose a tax (octroi duty in that case) and the plaintiff's suit was (for refund of octroi duty paid on it) on the ground that his goods were not assessable, that suit was dismissed in view of the bar of Section 164 above, vide *Municipal Board, Benaras v. Krishna & Co.*³ Suit was held to lie for refund of licence fee illegally recovered from that as neither plying for hire nor kept within the Municipality, vide *Jaswant Singh v. Municipal Board, Meerut*.⁴

Fees and not tax challenged—Civil suit lies—Where imposition of a fees, not amounting to tax (e. g., fees for projections over streets and drains) is challenged it was held in *Jagannath v. Municipal Board, Sonon*,⁵ that such fees is not covered within the scope of Sections 160 and 161 (analogous to Section 472 and 226 of the Nagar Mahapalika Act) and Civil suit is not barred as such.

Also see Head-note "Exceptions where Civil Suit is not barred" under Section 226 in this Act for further types of cases.

Limitation 6 months under sub-section (3) or as under Limitation Act—What to apply—When an official act, like dismissal from service, payment of salary, etc., is complained, the case is covered under this section and special period of limitation of 6 months provided under sub-section (3) would become applicable. But where the act complained relates to an act which is not an official act and cannot be contemplated to be even an act covered in this section, e.g. non-payment of salary, then sub-section (3) providing special period of limitation would not apply and the general law as regards limitation would become applicable. Consequently in the case of *K. N. Misra v. Municipal Board, Shikhabad*⁶, where K was earlier dismissed then he was reinstated and thereafter K filed suit for recovery of his arrears of pay beyond period of 6 months. The suit was dismissed as barred by limitation by the two courts below but was decreed treating limitation of 3 years. The case

1. 1936 A. L. J. 879 (F. B.).

2. 1937 A. L. J. 1286 (1290): 1937 A. W. R. 1135: 173 I. C. 868: 1938 Alld. 63.

3. 1935 A. L. J. 635: A. I. R. 1935 Alld. 760 (D. B.).

4. A. I. R. 1940 Alld. 346 (D. B.).

5. 1939 A. L. J. 168 (169) (D. B.): 1939 Alld. 337: 1939 A. W. R. 211.

6. 1971 A. L. J. 1142 (1145).

of *Sita Ram Goel v. Municipal Board Kanpur*¹ was distinguished on the basis that the latter case was a case of dismissal, i.e., an official act covered in this section and limitation was thus 6 months. See *Antarim Zila Parishad v. Shanti Devi*².

Cause of action—Starting point—The order of dismissal gives only the cause of action for setting aside the dismissal order and until setting aside there is no cause of action for the claim arrears of salary. The cause of action for arrears of salary revives only after the order of dismissal is set aside by a competent authority. *Sita Ram's case*¹ cannot be authority in such matter because in the latter case the order of dismissal was itself challenged, vide *K. N. Misra's case*³.

Cause of action recurring—Effect—*Whether another suit on similar facts is barred*
No—Whether a bye-law was challenged as void *ab initio*, the cause of action of challenging that bye-law is held a recurring cause of action and in such cases another suit, after due notice and proper pleadings with necessary particulars, would not be barred by a previous decision dismissing the suit on merits, vide *H. H. Rehman v. Municipal Board, Bijnore*⁴.

Notice—Requirements—

- (a) Cause of action
- (b) nature of relief sought
- (c) amount of compensation claimed
- (d) name and residence of the plaintiff and his attorney, advocate, pleader or agent, if any, for the purpose of such suit.

But suit not to be commenced—

before expiry of 2 months after service of notice, and after expiry of 6 months of the accrual of cause of action.

This section, however, more clearly requires an explicit statement of the cause of action as well as a statement of the relief sought. Where the notice not only does not mention the nature of the relief subsequently sought by an amendment in a suit but also fails to mention the cause of action explicitly and fully in it, such notice is invalid. It is well established that a cause of action embraces every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgement of the court. Although every piece of evidence need not be mentioned, the statement must give the whole bundle of essential facts which the plaintiff must prove before he can succeed. It must give a fair notice to the defendant of the time at which the cause of action arose. If a cause of action is said to arise in 1954 in a notice, it is difficult to hold that the bye-law was void *ab initio* when that bye-law was framed much before 1954, vide *H. H. Rehman v. Municipal Board, Bijnore*⁵.

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- 1. 1959 A. L. J. 106.
 - 2. 1965 A. L. J. 221.
 - 3. 1971 A. L. J. 1142 (1145).
 - 4. 1971 A. L. J. 352 (357).
 - 5. 1971 A. L. J. 352 (356).

¹[571-A. Mode of proof of Mahapalika records.—A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of a Mahapalika shall, if duly certified by the legal keeper thereof or a person authorised by the Mukhya Nagar Adhikari in this behalf, be received as *prima facie* evidence of the existence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matters.

Comments

Analogous Law—Section 330 Municipalities Act.

Scope—See the case noted below².

571-B. Restriction on summoning of Mahapalika officers or servants to produce documents.—No Mahapalika officer or servant shall in any legal proceedings to which a Mahapalika is not a party be required to produce any register or document the contents of which can be proved under the last preceding section by a certified copy or to appear as a witness to prove the matter and transactions recorded therein unless by order of the Court made for special cause.

572. Civil Court not to grant temporary injunction in certain cases.—No Civil Court shall in the course of any suit grant any temporary injunction or make any interim order—

- (a) restraining any person from exercising the powers or performing the functions or duties of a Sabhasad, Vishishta Sadasya, officer or servant of a Mahapalika or of a committee or sub-committee of a Mahapalika on the ground that such person has not been duly elected, or appointed, as the case may be ; or
- (b) restraining any person or persons or any Mahapalika committee or sub-committee of a Mahapalika from holding any election, or from holding any election in any particular manner.

Comments

Analogous Law—Section 326-A of the U. P. Municipalities Act.

573. Limitation of liability of agent or trustee of owner.—(1) No person who receives the rent of any premises in any capacity described in paragraph (i), (ii) or (iii) of sub-clause (a) of clause (52) of Section 2 shall be liable to do anything which is by this Act required to be done by the owner unless he has or, but for his own improper act or default, might have had sufficient funds of or due to the owner to pay for the same.

(2) The burden of proving the facts entitling any person to relief under sub-section (1) shall rest on such person.

(3) When any person has secured relief under sub-section (1) the Mukhya Nagar Adhikari may, by written notice, require such person to apply to the discharge of any obligation which he would, but for such relief, be bound to discharge, the first moneys which shall come to his hand on behalf of or for the use of the owner, and any person who fails to comply with such notice shall be deemed to be personally liable to discharge such obligation.

1. Added by U. P. Act XXI of 1964.

2. 1962 A. W. R. 39.

(4) Nothing in this section shall be deemed to prevent the Mukhya Nagar Adhikari from carrying out the necessary work and recovering the expenses from the actual owner.

CHAPTER XXV

Transitory Provisions, Repeals and Amendments

574. Constructions of references in other enactments.—In any enactment other than the U. P. Municipalities Act, 1916, the U. P. Town Improvement Act, 1919 and the Cawnpore Urban Area Development Act, 1945, in force on the date immediately preceding the appointed day in a City or any rule, order or notification made or issued thereunder and in force on such date in the said City unless a different intention appears—

- (a) references to municipalities and municipal boards constituted under the U. P. Municipalities Act, 1916, shall be construed as references to the City or to the Mahapalika of the said City, as the case may be, and such enactment, rule, order or notification shall apply to the said City or Mahapalika ;
- (b) references to the President or the Vice-President of the Municipal Board constituted under the U. P. Municipalities Act, 1916, shall be construed in respect of the City as references to the Mukhya Nagar Adhikari, appointed under this Act ;
- (c) references to the Improvement Trust or Development Board constituted under the U. P. Town Improvement Act, 1919 or the Cawnpore Urban Area Development Act, 1945, and to the Chairman or President of such Trust or Board shall in respect of the City be construed as references respectively to the Development Committee constituted under this Act and to the Mukhya Nagar Adhikari ;
- (d) references to the member of a Municipal Board constituted under the U. P. Municipalities Act, 1916, shall in respect of the City be construed as references to the members of the Mahapalika constituted under this Act for the City ; and
- (e) references to any chapter or section of the U. P. Municipalities Act, 1916, the U. P. Town Improvement Act, 1919, and the Cawnpore Urban Area Development Act, 1945, shall as far as possible be construed in respect of the City as reference's to this Act or its corresponding chapter or section.

575. Sums due.—All sums due to the said municipality or local authority for the area which has been constituted a City, whether on account of any tax or any other account, shall be recoverable by the Mukhya Nagar Adhikari for the City and for the purpose of such recovery he shall be competent to take any measure or institute any proceeding which it would have been open to the authority of the said municipality or local authority to take or institute, of this Act had not come into operation and the said area had not been constituted to be a City.

576. Debts, obligations, contract and pending proceedings.—(1) All debts and obligations incurred and all contracts made by or on behalf of the said municipality or local authority immediately before the appointed day and subsisting on the said day shall be deemed to have been incurred and made by the Mukhya Nagar Adhikari for the said City in exercise of the powers conferred on him by this Act and shall continue in operation accordingly.

(2) All proceedings pending before any authority of the said municipality or local authority on the said day which under the provisions of this Act are required to be instituted before or undertaken by the Mukhya Nagar Adhikari shall be transferred to and continued by him and all other such proceedings shall, so far as may be, be transferred to and continued by such authority before or by whom they have to be instituted or undertaken under the provisions of this Act.

(3) All appeals pending before any authority of the said municipality or local authority on the said date shall, so far as may be practicable, be disposed of as if the area was constituted to be a City when they were filed.

(4) All prosecutions instituted by or on behalf of the said municipality or local authority and all suits and other legal proceedings instituted by or against the said municipality, local authority or any officer of the said municipality, or local authority pending on the said date shall be continued by or against the Mukhya Nagar Adhikari or the Mahapalika for the said City, as the case may be, as if the area was constituted to be a City when such prosecution, suit or proceeding was instituted.

577. Continuation of appointments, taxes, budget estimate, assessments, etc.—Save as expressly provided by the provisions of this Chapter or by a notification issued under Section 579—

- (a) any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, regulation, form made, issued, imposed or granted under the U. P. Municipalities Act, 1916, or the Cawnpore Urban Area Development Act, 1945, or the U. P. Town Improvement Act, 1919, or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be ;
- (b) any notice or notification or sanction of any improvement scheme for the area included in the City issued under the U. P. Town Improvement Act, 1919 or the Cawnpore Urban Area Development Act 1945, shall be deemed to have been issued under this Act, and all further proceedings in furtherance of such scheme may be taken accordingly ;
- (c) all proceedings for acquisition of land whether in pursuance of any scheme of improvement or otherwise initiated under the U. P. Town Improvement Act, 1919, the Cawnpore Urban area Development Act, 1945, or the U. P. Municipalities Act, 1916, or any other enactment applicable to the area included in the City may be continued as if they had been initiated under this Act ;
- (d) all budget estimates, assessments, valuations, measurements, and divisions made under the U. P. Municipalities Act, 1916, or the U. P. Town Improvement Act, 1919, or the Cawnpore Urban Area Development Act, 1945, or any other law in force in any area constituted to be a City immediately before the appointed

day shall, in so far as they are consistent with the provisions of this Act, be deemed to have been made under this Act ;

- (e) all officers and servants in the employ of the said Municipality, Improvement Trust, Development Board or local authority immediately before the appointed day shall, notwithstanding anything in Sections 106, and 107, be officers and servants employed by the Mahapalika in a temporary capacity under this Act and ¹[for so long as they are not appointed to posts created under this Act or finally absorbed in any centralised service created by rules made under Section 112-A or their services do not stand determined in accordance with such rules, they shall draw the same salaries and allowances and, except as otherwise provided in such rules, be subject to the same conditions of service to which they were entitled or were subject immediately before the appointed day ;

²[(cc) For so long as the posts mentioned in Section 106 are not created by the Mahapalika and formal appointments are not made thereto as provided in this Act—

- (1) the Mukhya Nagar Adhikari shall be competent to make such changes in the designations of the existing officers and servants mentioned in clause (e) as may be necessary having regard to the provisions of this Act and the rules made thereunder, and the officers and servants so designated shall be competent to exercise and perform the powers, duties and functions assigned to them under the Act and the said rules :

Provided that a copy of every order of the Mukhya Nagar Adhikari made under this sub-clause shall be sent to the State Government which may make such modifications therein as may be necessary or desirable ;

- (2) such officer of the State Health Service as the State Government may nominate or designate in this behalf shall function as Nagar Swasthya Adhikari or as Nagar Swasthya Adhikaris under this Act ;
- (3) servants of the State Government who are on deputation with the said Municipality, Improvement Trust, Development Board or local authority immediately before the appointed day shall, notwithstanding anything contained in Sections 106 and 107, be deemed to be on deputation with the Nagar Mahapalika :

Provided that the State Government may, at any time, of its own accord or on a request being made by the Mahapalika withdraw any such officer or *substitute* any such officer by a new officer.]

- (f) ¹[object to the provisions of any rules made under Section 112-A, the following procedure shall be followed in appointing the officers and servants referred to in clause (e) to the posts created by the Mahapalika under Section 106—

1. Subs. by U. P. Act No. XXIX of 1966.

2. Ins. by U. P. Act XXI of 1964 and shall be deemed always to have been inserted.

- (1) appointment to posts for which consultation of the State Public Service Commission is necessary under Section 107 shall be made according to the provisions of that section ;
- (2) appointments to other posts shall be made by the Mukhya Nagar Adhikari in consultation with the Nagar Pramukh and in accordance with any general or special directions of the State Government in this behalf ;
- (3) if for any post suitable person out of the temporary officers and servants aforesaid is not available, appointment to such post shall be made otherwise under the provisions of this Act ;
- (4) if any temporary officer or servant as aforesaid is found not to be suitable for any post created by the Mahapalika or he declines to accept the post to which he is appointed on the ground that its pay or time scale of the pay is less than his present pay or time scale, his service shall be terminated after giving him necessary notice as required under the terms of his service but each such officer or servant whose services have been terminated in this manner shall be entitled to such leave, pension or gratuity as he would have been entitled to take or receive on termination of his service if this Act has not been passed ;
- (g) the service rendered by the officers and servants referred to in clause (e) before the appointed day shall be deemed to be service rendered in the service of the Mahapalika.

Comments

Scope.—In view of the provisions of this Adhiniyam notifications issued by the State Government under the U. P. Municipalities Act became applicable under the Nagar Mahapalika Adhiniyam.

In a case, where a complaint was filed under the provision of Food Adulteration Act, 1954, by the Medical Officer of Health of the Municipal Board, Kanpur, after the introduction of this Adhiniyam, it was held that that medical officer of health became the medical officer of health of the Nagar Mahapalika ; in view of the provisions of the U. P. Nagar Mahapalika Adhiniyam, 1959, and notifications issued with regard to the powers of the employees of the Municipal Board of Kanpur became applicable to the corresponding employees of the Nagar Mahapalika. The State Government had issued a notification authorising the Medical Officer of Health of the Municipal Board of Kanpur to make complaint with regard to offences committed under the said Food Act and by virtue of the provisions of the U. P. Nagar Mahapalika Adhiniyam, 1959, the Medical Officer of Health, who automatically became the Medical Officer of Health of the Nagar Mahapalika, could make such complaints which could be taken cognizance of by magistrates. In other words, the Medical Officer of Health of the Nagar Mahapalika of Kanpur was a person duly authorised by the State Government to make complaints contemplated by Section 20 of the said Food Act, vide *Nagar Mahapalika, Kanpur v. Sri Ram*¹.

Retrospectivity of this section.—While dealing with the analogous Section 333-A of the U. P. Municipalities Act, it was held in *Notified Area v. Ram*

1. A. I. R. 1964 Alld. 270 (272) (D. B.).

*Singhasan Prasad*¹ that the language and the purpose of Section 333-A clearly show that it operates retrospectively. The words 'where a municipality is created in place of a town area' mean also 'where a municipality has been created in place of a town area'. Again, the section clearly declares that the eight consequences enumerated therein shall "follow as from the date of creation of the municipality". This phrase manifests beyond doubt that the section takes effect from the date of creation of the municipality. Thirdly, the phrase "on the date immediately preceding the said date" also points to the same result. By this phrase the legislature continues the state of affairs prevailing in the replaced town area on the date immediately preceding the date of creation of the municipality. Fourthly, clause (iv) of Section 333-A is also indicative of the same result. It provides that all liabilities against the Town Area which are outstanding on the date immediately preceding creation of the municipality' shall thereafter be the liabilities of the Board. The word 'thereafter' shows that the board shall bear the liabilities from the date of creation of the municipality. Fifthly, the phrase not withstanding anything contained in Section 34 of the Town Areas Act, 1914, or Section 339 of this Act' is also significant. Section 34 of the Town Areas Act provides that when by reason of cancellation under Section 3(d) of an order under Section 3(a) local area ceases to be a town area, the unexpended proceeds of any tax levied therein shall be applied for the benefit of the inhabitants of the area as the State Government may think fit. Section 339 is a similar provision in relation to the abolition of a notified area. If Section 333-A does not relate back to the date of creation of the Municipality, non-obstacle clause would become inoperative and the unexpended proceeds of any tax will have to be spent for the benefit of the inhabitants of the area as the State Government decides.

The purpose of Section 333-A is to ensure a smooth and orderly transition from the town area to the municipality. The failure to give retrospective effect to the section would not only frustrate this purpose but could cause severe prejudice and great hardship to the innocent public dealing with the town area. They would not be able to enforce their rights which have accrued to them against the town area. Their permits and licences would become waste paper. Their legal proceedings against the town area would terminate. Officers and servants of the town area would be thrown out of employment.

In sum, the history, the nature, the purpose and the language of Section 333-A clearly manifest the legislative intention of giving it retrospective operation from the date of creation of the municipality. Clause (1) of Section 333-A, which deals with taxes, cannot singly countervail the section. Further, it is not free from doubt that Section 333-A(1) is a taxing enactment. It does not impose, enforce, abolish or regulate any tax; it only continues the tax already imposed in the area. The same principle appears to apply to the present section of this Adhiniyam as well.

*Whether repealed by Section 581 of this Adhiniyam—No—See Headnote "Scope" under Section 581 in this Book and Gur Bux Rai v. Lucknow Nagar Mahapalika*².

1. 1970 A. W. R. 393(399) (F. B.) : A. I. R. 1970 Alld. 561.

2. A. I. R. 1966 Alld. 552 (554).

578. Provision for municipality or local authority which is superseded or dissolved. Any reference in the foregoing sections to a municipality or local authority shall, in case such municipality or local authority has been superseded or dissolved or placed under the charge of an administrator under any enactment made for that purpose be deemed to be a reference to the person or persons appointed to exercise the powers or to perform the functions of such municipality or local authority under any law relating to such municipality or local authority.

579. Special provisions.—(1) On any local area being constituted to be a City under Section 3, the State Government may, notwithstanding anything in this Act or any other enactment for the time being in force in such area—

- (a) by notification in the Official *Gazette* appoint an interim Mukhya Nagar Adhikari to exercise the powers and perform the functions of a Mukhya Nagar Adhikari under this Act in relation to elections to constitute the Mahapalika for such City ;
- (b) requisition the services of any officer or servant of the Municipal Board, Improvement Trust or Development Board or other local authority functioning in relation to the area included in such City for the purposes of all works relating to the establishment of the Mahapalika of such City ;
- (c) by order provide for such other matters as may be necessary for facilitating the establishment of the Mahapalika for such City.

(2) The salary and allowances of the officers and servants referred to in clause (b) of sub-section (1) shall be paid out of the funds of the respective local authority of which they were officers or servants at the time of requisition of their services and the salary and allowances of the interim Mukhya Nagar Adhikari shall be paid out of the fund of such local authority as the State Government may direct.

580. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act or, by reason of anything contained in this Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by order direct that this Act shall [during such period as may be specified in the order but not extending beyond the expiry of [five years]¹ from the date of coming into operation of this section] have effect subject to such adaptations whether by way of modification, addition or omission as it may deem to be necessary and expedient.

(2) An order made under sub-section (1) shall be laid as soon as may be before both the Houses of the Legislature.

Comments

'Removal of difficulties'—It is delegation of power—*Scope*.—This form of delegation of power by the Legislature is a very common feature as the Legislature cannot possibly contemplate all the difficulties which may arise in giving effect to the provisions of statute. But as laid down by their Lordships of the Supreme Court in *Harishanker Bagla v. State of Madhya Pradesh*,² the essential power of legislation cannot be delegated,

1. Subs. by S. 8 of U. P. Act XIV of 1950.

2. Subs. by U. P. Act XVII of 1963 for the words "four year".

3. A. I. R. 1954 S. C. 465.

"In other words the Legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in determination or choice of the legislative policy into a binding rule of conduct."

To the same effect are the decisions of the Supreme Court in *Messrs. Bhatnagars and Co., Ltd. v. Union of India*¹ and *Mohammad Husain Ghulam Mohammad v. State of Bombay*.² The legislative policy was laid down by the Legislature by enacting Section 365 of the Adhiniyam and by imposing a bar of five years for the completion of the scheme at least upto the stage of making of awards and by providing one year's period of grace in the proviso. It was done deliberately by the Legislature so that compensation may be determined and proceedings may not hang on for several years. This, being a matter of principle and legislative policy could not be the subject of Removal of Difficulties Orders.

The Removal of Difficulties Orders issued by the State Government in the case *N. C. Upadhyaya v. State of U. P.*³ have, in effect, wiped out the proviso to sub-section (4) of Section 365 and sub-section (c) of Section 577 of the Adhiniyam. The Legislature had made a specific provision under the proviso to sub-section (4) of Section 365 of the Adhiniyam and had provided that the State Government may in any particular case before the expiry of the period of five years extend the period by one year. But a radical change in the purpose and policy of the Adhiniyam could not be made by the State Government by a general order issued under Section 580 of the Adhiniyam. As against a general provision a specific provision contained in the Adhiniyam must prevail. The subject matter of Section 580 is entirely foreign to the proviso of sub-section (4) of Section 365 of the Adhiniyam. The State Government under Section 580 of the Adhiniyam has been given the power to remove any difficulty giving effect to the provisions of the Adhiniyam or if any difficulty arises by reason of anything contained in the Adhiniyam to any other enactment for the time being in force. It has not been given the power to legislate and wipe out some provisions of the Adhiniyam or to add anything to them. The State Government has been given the power under Section 580 in order to remove a difficulty and has been authorised to make only such alterations in the Adhiniyam which are not of substance but are only formal. In other words the State Government cannot introduce changes of substance in any provision of the Adhiniyam.

By changing the period of limitation contained in the proviso to sub-section (4) of Section 365 of the Adhiniyam the State Government has made a change of substance and not of form which it was not authorised to do. Section 580 of the Adhiniyam "does not confer on the State Government unguided power to "prune and prune" the Adhiniyam. The Legislature had given the power to the State Government to extend the period of five years by one year for specific purpose. The State Government under Section 580 of the Adhiniyam could issue Removal of Difficulties Orders "to give bud and bloom to provisions" of the Adhiniyam and not make substantial

1. A. I. R. 1957 S. C. 478.

2. A. I. R. 1962 S. C. 97.

3. A. I. R. 1965 All. 356 (363).

alterations in its provisions. By issuing the various Removal of Difficulties Orders the State Government had made a radical alteration in the provisions of the Adhiniyam and has 'overstepped the periphery' of Section 580 of the Adhiniyam and has altered 'the material of which the Act is woven'.

If any difficulty arises in giving effect to the provisions of the Adhiniyam, or by reason of anything contained in the Adhiniyam to any other enactment for the time being in force the State Government has undoubted power to remove it by virtue of the power conferred on it by Section 580 of the Adhiniyam but only if the difficulty is minor and unimportant. It could never be the intention of the Legislature that the Executive Government would be free to undo any provisions of the Adhiniyam in the guise of removing a difficulty. This is a peculiar jurisdiction of the Legislature. If the difficulty is major or substantial Section 580 would not be of any help to the State Government, vide *N. G. Upadhyaya v. State of U. P.*¹

581. Repeal.—The U. P. Municipalities Act, 1916, the U. P. Town Areas Act, 1914, the U. P. Town Improvement Act, 1919, the U. P. Town Improvement (Appeals) Act, 1920, the U. P. Town Improvement (Adaptation) Act, 1943,² [the U. P. District Boards Act, 1922, the U. P. Local Bodies (Appointment of Administrator Act, 1953] and the Cawnpore Urban Area Development Act, 1945, shall, with effect from the appointed day, stand repealed in so far as they may be applicable to any area included in the City.

Comments

Scope.—Section 581 of the U. P. Nagar Mahapalika Adhiniyam, does not repeal the provisions of Section 577 (e) of that Adhiniyam, so as to make them nugatory. Even if the two provisions contained in Sections 577 (e) and 581 are destructive of each other, then there is a well known rule of the interpretation of statutes that a particular enactment is not repealed by a general enactment in the same statute, vide *State of Bombay v. United Motors (India) Ltd*³; also see *Gur Bax Rai v. Lucknow Nagar Mahapalika*.⁴

SCHEDULE I

(Section 119)

Non-delegable functions of Mahapalika authorities

PART A

Functions of Mahapalika which may not be delegated

| Chapter Section | Function |
|-----------------|--|
| III | 95 (1) To constitute Special Committees or joint Committee. |
| | 96 (1) To join with a Cantonment authority or any other local authority or with a combination of such authorities. |

1. A. I. R. 1965 Alld. 356 (363).

2. Added by S. 9 of U. P. Act XIV of 1959.

3. A. I. R. 1953 S. C. 252 (273).

4. A. I. R. 1966 Alld. 552 (554).

| Chapter | Section | Function |
|---------|----------------|---|
| VI | 127 | To sanction the acceptance, or acquisition of immovable property if the value of the property which it is proposed to accept, acquire or give in exchange exceeds rupees five thousand. |
| | | To sanction the taking of any property on lease for a term exceeding three years. |
| | | To sanction the acceptance of any gift or bequest of property burdened by an obligation if the value exceeds five thousand rupees. |
| VII | 139 | To constitute special fund. |
| | 146 (4) | To adopt the budget. |
| | 148 | To determine the rates of taxes. |
| | 151 | To vary or alter the budget estimates adopted by it. |
| VIII | 154 } 155 } | To borrow money. |
| | 157 | To constitute sinking fund. |
| IX | 172 | To impose a tax. |
| | 204 | To abolish or alter a tax. |
| | 216 | To consolidate taxes. |
| | 225 | To have recourse to supplementary taxation. |
| XIV | 360 | To abandon or sanction the scheme with or without modifications submitted to it by the Development Committee. |
| | 364 | To alter a scheme after it has been passed either by the Mahapalika or by the State Government. |
| XVI | 423 | To determine whether the establishment of new private markets or maintenance of private slaughter-houses shall be permitted in the City or in any specified portion of the City. |

PART B

Functions of Executive Committee which may not be delegated

| | | |
|----|-----|---|
| VI | 127 | (i) To fix terms, rates or maximum prices for the acquisition of property. |
| | | (ii) to sanction compulsory acquisition of any property and the exchange of any immovable property, and |
| | | (iii) to sanction the taking of any property on lease for a term exceeding twelve months. |
| | 135 | To sanction estimates of projects costing more than ten thousand rupees. |

| Chapter | Section | Function |
|---------|---------|--|
| IX | 213 | To alter or amend the assessment list. |
| XVI | 443 | To fix fees for plumbers. |

PART C

Functions of Development Committee which may not be delegated

| | | |
|-----|-----|---|
| XIV | 344 | To declare an area to be insanitary area. |
| | 345 | To direct the framing of a Basti Sudhar Yojana (Slum Clearance and Re-building Scheme). |
| | 351 | To give permission for surveys to be made. |
| | 356 | To accept with or without modification a scheme prepared by the Mukhya Nagar Adhikari. |
| | 359 | To consider objections or representations in regard to an improvement scheme. |

PART D

Function of the Mukhya Nagar Adhikari which may not be delegated to other officers or servants

| | | |
|-----|----------------|--|
| IV | 107 (2) | To make appointment to posts carrying an initial salary of not less than Rs. 200 in consultation with the State Public Service Commission. |
| VI | 127 | To acquire any movable or immovable property within or without the City or any interest in such property. |
| | 129 | To dispose of any property on behalf of the Mahapalika. |
| X | 229 | To declare that any drain or part thereof or any drainage or sewage disposal works shall vest in the Mahapalika. |
| | 250 | To appoint places for emptying of drains and disposal of sewage. |
| XII | 277 | To prohibit use of public streets for certain kinds of traffic. |
| | 278 | To acquire premises for improvement of public streets. |
| | 279 | To prescribe a street line. |
| | 280 } 281 } | To order setting back of buildings to regular line of the street and pulling down buildings or any part thereof in case of default. |

| Chapter | Section | Function |
|---------|---------|---|
| XIII | 282 } | To acquire open land or land occupied by platforms within regular line of street. |
| | 283 } | |
| | 284 | To order setting forward of buildings. |
| | 290 | To declare a private street to be a public street. |
| | 293 | To permit projections over streets. |
| | 299 | To require removal of any structure or fixture erected or set up before the appointed day. |
| | 305 | To permit erection, etc., of sky-signs. |
| | 322 | To refuse to grant permission to construct a building until the street is commenced or completed. |
| | 328 | To cancel permission to proceed with any building or work on ground of material misrepresentation by applicant. |
| | 333 | To direct removal of persons directing unlawful work. |
| | 334 | To issue notice for the vacation of any building in certain circumstances. |
| | 335 | To regulate future construction of buildings in particular streets or localities. |
| | 336 | To prohibit re-erection of buildings on inaccessible sites. |
| XVI | 340 | To call for statement of accommodation. |
| | 430 | To fix with the permission of the Mahapalika premises within the City for the slaughter of animals. |
| XXI | 525 | To declare with the approval of the Mahapalika certain expenses to be improvement expenses. |

SCHEDULE II

(Section 376)

Modifications in the Land Acquisition Act, 1894 (hereinafter called "the said Act")

1. **Amendment of Section 3.**—After clause (e) of Section 3 of the said Act, the following shall be deemed to be inserted, namely—

“(ee) the expression ‘local authority’ includes a Mahapalika constituted under the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959.”

2. Notification under Section 4 and Section 6 to be replaced in the case of improvement schemes by notifications under Sections 357 and 363 of this Act.—(1) The first publication of a notice of an improvement scheme under Section 357 of this Act shall be *substituted* for and have the same effect as publication, in the official *Gazette*, and in the locality, of a Notification under sub-section (1) of Section 4 of the said Act, except where a declaration under Section 4 or Section 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of paragraphs 10 and 11 of this Schedule, the issue of a notice under sub-section (4) of Section 348 of this Act in the case of land acquired under that sub-section and the publication of a notification under Section 363 of this Act in the case of land acquired under any other improvement scheme under this Act shall be *substituted* for and have the same effect as a declaration by the State Government under Section 6 of the said Act, unless a declaration under the last-mentioned section has previously been made and is still in force.

3. Amendment of Section 11.—The full-stop at the end of Section 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be *added*, namely—

“and”

“(iv) the cost which, in his opinion, should be allowed to any person, who is found to be entitled to compensation, [***]¹ as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.”

4. Amendment of Section 15.—In Section 15 of the said Act, for the word and figures “and 24” the figures, word and letters “24 and 24-A” preceded by a comma, shall be deemed to be *substituted*.

5. Amendment of Section 17.—(1) In sub-section (3) of Section 17 of the said Act, after the figures “24” the words, figures and letters “or Section 24-A” shall be deemed to be *inserted*.

(2) To the said Section 17 the following shall be deemed to be added, namely :—

“(5) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by the District Magistrate or a Magistrate of the first class to be unhealthy.

(6) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of Section 9, and shall hear without any avoidable delay any objection which may be urged by them.

(7) When proceedings have been taken under this section, for the acquisition of any land, and any person sustains damage in consequence

1. Certain words deleted by U. P. Act XXIII of 1961.

of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

6. Transfer of land to Mahapalika.—After Section 17 of the said Act, the following shall be deemed to be *inserted*, namely :

"17-A. In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Mukhya Nagar Adhikari ; and the land shall thereupon vest in the Mahapalika, subject to the liability of the Mahapalika to pay any further costs which may be incurred on account of its acquisition."

7. Amendment of Section 18.—The full-stop at the end of sub-section (1) of Section 18 of the said Act shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be *added*.

8. Amendment of Section 19.—After the words "amount of compensation" in clause (c) of Section 19 of the said Act, the words "and of costs (if any)", shall be deemed to be *inserted*.

9. Amendment of Section 20.—After the words "amount of the compensation" in clause (c) of Section 20 of the said Act, the words "or costs" shall be deemed to be *inserted*.

10. Amendment of Section 23.—(1) In clause first and clause sixth of sub-section (1) of Section 23 of the said Act, after the words "publication of the notification under Section 4, sub-section (1)", and words "publication of the declaration, under Section 6" shall be deemed to be *added*—

(a) if the land is being acquired under sub-section (3) of Section 348 of this Act, the words "or in the case of acquisition under sub-section (3) of Section 348 of the U. P. Nagar Mahapalika Adhinyam, 1959 of the issue of the notice under sub-section (3) of Section 348 of that Act", and

(b) in any other case, the words "or in the case of acquisition of land under any improvement scheme other than a deferred street scheme under Chapter XIV of the U. P. Nagar Mahapalika Adhinyam, 1959, of the first publication of the notification under Section 357 of that Act".

¹[(2)] * * * *.

(3) At the end of Section 23 of the said Act, the following shall be deemed to be added, namely :

"(2) for the purposes of *clause first* of sub-section (1) of this section—

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause ;

(b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure

1. *Subs. Para (2)* was added by U. P. Act XIV of 1959 but has been *deleted* by U. P. Act XXIII of 1961.

a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

- (c) if any person without the permission of the Mukhya Nagar Adhikari required by clause (b) of sub-section (1) of Section 348 or by sub-section (4) of Section 350 of the Nagar Mahapalika Adhiniyam, 1959, has erected, re-erected, added or altered any building or wall so as to make the same project beyond the street alignment prescribed under the said Section 348 or within the area specified in sub-section (4) of the said Section 350, as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded ;
- (d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
- (e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ;
- (f) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates such overcrowding shall be disregarded; and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ;
- (g) when the owner of the land or building has after the passing of the U. P. Nagar Mahapalika Adhiniyam, 1959, and within two years preceding the date with reference to which the market-value is to be determined, made a return under Section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the court may otherwise direct, and the market-value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

11. Amendment of Section 24.—For clause “seventhly” of Section 24 of the said Act, the following shall be deemed to be substituted, namely :

"seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

12. New Section 24-A.—After Section 24 of the said Act, the following shall be deemed to be *inserted*, namely :

"**24-A. Further provision for determining compensation.**—In determining the amount of compensation to be awarded for any land acquired under this Act for a Mahapalika established under the U. P. Nagar Mahapalika Adhiniyam, 1959, the Court shall also have regard to the following provisions, namely—

- (1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;
- (2) if, in the opinion of the Court any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Court considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;
- (3) if, in the opinion of the Court, any building which is used or is intended or likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

13. Amendment of Section 31.—(1) After the words "the compensation" in sub-section (1) of Section 31 of the said Act, and after the words "the amount of the compensation" in sub-section (2) of that section, the words "and costs (if any)" shall be deemed to be *inserted*.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of Section 31 of the said Act, the words "or costs" shall be deemed to be *inserted*.

14. New Section 48-A.—After Section 48 of the said Act the following shall be deemed to be *inserted*, namely :

"**48-A. Compensation to be awarded when land not acquired within two years—**

- (1) If within a period of two years from the date of the publication of the declaration under Section 6 in respect of any land, the Collector has not made an award under Section 11, with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

- (2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

15. **Amendment of Section 49.**—After sub-section (1) of Section 49 of the said Act, the following shall be deemed to be *inserted*, namely :

"(1-a): For the purposes of sub-section (1) land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

SCHEDULE III

(See Section 460)

Table of penalties

PART I

| Sections, sub-sections and clauses | Fine which may be imposed |
|---|---------------------------|
| 396(2), 397, 398, 400(g), 400(h), 400(i), 403, 404, 405 | Ten rupees. |
| 388(2), 408, 425(2), 438(6), 442, 443, 447, 448, 449 | Twenty rupees. |
| 246, 277, * * * *1, 294, 303(1), 307, 422(e), 424, 426 (1), 428, 451(5). | Fifty rupees. |
| 238, 239, 242(1) (b), 243(b), 248, 257, 258, 259(1), 259(2), 270, 281(2), 289, 293(3), 295(1), 295(2), 299(1), 302(1), 303(2), 304(1), 305(1), 305(3), 309(1), 312, 330(4), 332, 409, 410, 411, 418, 427, 430, 432(1), 439. | One hundred rupees. |
| 236, 252(1), 253, 267(1), 292(1), (2), (4), 303(3), 308(1), 330(2), 330(3), 333(1), 343(3), 392(3), 423(2), 440, 482(3). | Two hundred rupees. |
| 245(1), 288(1), 324, * * * *2, 329, 331(1), 331(2), 391(2), 394(1), 413, 417(1) 438(1). | Five hundred rupees. |
| 279(4), 326, 335(7), 401, 402 | One thousand rupees. |

1. The figures "293(3)" deleted by U. P. Act XXIII of 1961.

2. The figures "326" deleted by *Ibid*.

PART II

| Sections, sub-sections and clauses | Daily fine which may be imposed | |
|--|---------------------------------|--------------------------|
| 293(3), 294, 427, 428, 438(6) | ... | ... Five rupees. |
| 236, 238, 239, 242(1) (b), 243(b), 246, 248, 257, 258, 259(1), 259(2), 267(1), 270, 289, 290 (2), (4), 295(1), 295(2), 299, 303(2), 305(1), 305(3), 308(1), 309(1), 330(4), 422(e), 439, 451(5). | | Ten rupees. |
| 304(1), 307, 330(2), 330(3), 333(1), 334(3), 440 | ... | Twenty rupees. |
| 245(1), 281(2), 302(1), 303 (1), 332, 391(2), 392(3), 394(1), 423(2), 438(1), 482(3). | | Fifty rupees. |
| 279(4), 324, 329, 331(1), 331(2), 335(7) | ... | One hundred rupees. |
| 401, 402 | ... | ... |
| ... | ... | ... Five hundred rupees. |

RULES UNDER U. P. Nagar Mahapalika Adhiniyam 1959

UTTAR PRADESH NAGAR MAHAPALIKA SEWA NIYAMAVALI, 1962¹

PART I General

1. Short title, commencement and application.—(1) These rules may be called the Uttar Pradesh Nagar Mahapalika Sewa Niyamavali, 1962.

(2) They shall come into force with effect from February 1, 1963.

(3) They shall, except as provided in rule 11, apply to all servants of a Mahapalika.

2. Definitions.—In these rules, unless there is anything repugnant in the subject or context—

- (i) "Act" means the U. P. Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959) ;
- (ii) "Appointing Authority" means any of the authorities empowered under section 107 of the Act to appoint servants of the Mahapalika ;
- (iii) "Constitution" means the Constitutions of India ;
- (iv) "Citizen of India" means a person who is or is deemed to be a citizen of India under Part II of the Constitution ;
- (v) "Commission" means the Uttar Pradesh Public Service Commission ;
- (vi) "Direct recruitment" means recruitment made under these rules otherwise than by promotion or transfer.
- (vii) "Government" means the Government of Uttar Pradesh ;
- (viii) "Mahapalika" means a Mahapalika established under section 4 of the Act ;
- (ix) "Section" means section of the Act ;
- (x) "Selection Committee" means the Committee constituted under sub-section (4) of section 107 of the Act.

3. Nationality.—A candidate for recruitment to service under a Mahapalika must be a citizen of India or a subject of Sikkim.

4. Age.—(1) A candidate for direct recruitment to posts under the Mahapalika shall be not less than 18 years and not more than 30 years of age on the first day of January of the year in which the applications for selection are invited :

Provided, firstly, that the maximum age-limit shall not be applicable to the servants referred to in clause (e) of section 577 of the Act and those appointed to the service of a Mahapalika between February 1, 1960 and the date of the coming into force of these rules:

Provided, secondly, that the maximum age-limit in the case of posts having an initial salary of Rs. 500 or more shall be 45 :

1. Published under notification no. 173-Ma(Ni-18)/XI-C-1-Corp. (IV)-57, dated December 14, 1962.

Provided, thirdly, that the minimum and maximum age limits—

- (i) for Vaidis and Hakims shall be 25 and 45 years ;
- (ii) for Bhistics and sweepers shall be 18 and 45 years ;
- (iii) for female inferior servants (Khadimas) employed in Girls' Schools shall be 30 and 50 years; and
- (iv) for drivers, mechanics and artisans (i. e. all posts for which skilled labour is required) shall be 21 and 45 years :

Provided, fourthly, that there shall be no maximum age-limits for Pankha Coolie :

Provided, lastly, that the maximum age-limit for candidates of the Scheduled Castes shall except in the case of posts mentioned in the third proviso be greater by five years than the corresponding age-limit prescribed for other candidates.

(2) Notwithstanding anything contained in sub-rule (1), the age-limit may be relaxed by the appointing authority—

- (i) in respect of the posts within the purview of the Commission, in consultation with the Commission and after prior approval of the Government ; and
- (ii) in respect of any other posts, with the approval of the Commissioner of the Division.

5. Character.—The character of a candidate for direct recruitment must be such as to render him suitable in all respects for employment under the Mahapalika. The appointing authority shall satisfy itself on this point and in doing so shall follow the instructions that may be issued by the Government from time to time.

6. Physical fitness—No person shall be appointed to any post under the Mahapalika by direct recruitment unless he is in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his public duties. Before a candidate not already in permanent service of the Mahapalika or the Government is finally selected for direct recruitment in a substantive vacancy, he shall be required to produce a medical certificate of fitness—

- (a) a member of the Mahapalika Medical Service not below grade II authorised by the Mahapalika for the purpose if the candidate has been selected for appointment to a post carrying an initial salary of less than Rs. 200 per mensem :

Provided also that the existing employees who have already undergone a medical examination and found physically fit shall not be required to produce the certificate of physical fitness at the time of their appointment to the post created by the Mahapalika under section 106 of the Act.

- (b) from the Civil Surgeon of the district in the case of posts carrying an initial salary of Rs. 200 or above but less than Rs. 500 ; and
- (c) from a Medical Board to be constituted by the Government by general or special order in all other cases :

Provided that no woman candidate for permanent employment in Mahapalika service shall be required to undergo medical examination by a

male medical officer. In such a case the appointing authority may, at his discretion, accept a certificate in the prescribed form from any registered medical woman and preferably from a registered medical woman in Government or Mahapalika employment.

7. Marital status.—No male candidate who has more than one wife living and no female candidate who has married a man having already a wife shall be eligible for appointment to posts under a Mahapalika ;

Provided that the appointing authority may, if satisfied that there are special grounds for exempting any person from the operation of this rule, refer the matter to the Executive Committee whose decision shall be final.

8 Representation of Scheduled Castes—Reservation for Scheduled Castes in respect of posts under a Mahapalika shall, as far as possible, be in accordance with such orders of the Government for reservation as may from time to time be applicable to services under the Government.

9. List of vacancies and surplus staff—(1) The Mukhya Nagar Adhikari shall, after consulting all Heads of Departments under the Mahapalika, prepare a list of vacancies and surplus staff in each department by the first day of October every year and circulate it among the appointing authorities :

Provided that in the case of tuitional and supervisory staff of the Education Department of a Mahapalika, the Mukhya Nagar Adhikari shall prepare the list by the first day of May every year.

(2) In case of doubt or dispute about a servant being a member of the tuitional or supervisory staff of the Education Department, the decision of the Mukhya Nagar Adhikari shall be final.

10. Seniority.—(1) Separate seniority list shall be maintained for each class of posts under a Mahapalika.

(2) Seniority in any class of posts shall be determined according to the date of the order of appointment in a substantive capacity in that class :

Provided, firstly, that if in any class of posts two or more persons are appointed substantively on the same date their seniority *inter se* shall be determined in accordance with the merit list on the basis of which they were appointed in the same batch. If no such merit list exists their *inter se* seniority shall be determined—

(i) according to the total length of service in that class of post ;

Explanation.—If any person prior to his appointment to a post in the Mahapalika has held any appointment in the same or equivalent scale either in the same class of post or in posts with identical or similar duties, in any local body in Uttar Pradesh, the total length of such service on the previous post shall be taken into account in computing the total length of service.

(ii) if the total length of service of two or more persons is equal, the person senior in age shall be placed above the person junior in age :

Provided, secondly, that *inter se* seniority of persons appointed by promotion in the same batch shall be determined in accordance with their relative seniority in the post from which they have been promoted :

Provided, thirdly, that where recruitment is made both by promotion and by direct recruitment the persons appointed by promotion shall be ranked senior to those appointed by direct recruitment in the same batch: and

Provided, fourthly, that *inter se* seniority of persons appointed by promotion in the same batch from different classes of posts shall be determined on the basis of their substantive scale of pay, the person drawing higher scale of pay in one class of posts being placed senior to one drawing lower scale of pay in another class of posts.

(3) Seniority of officers and servants referred to in clause (e) of section 577 of the Act shall, to the extent not covered by sub-rule (2) above, be determined in accordance with such general or special directions as may be issued in this behalf by the Government from time to time.

(4) In the case of temporary employees appointed on or after February 1, 1960, seniority shall be determined by the total length of service in the same class of post.

(5) For purposes of this rule, total length of service shall include continuous service in a temporary capacity also.

11. Tuitional and Supervisory Staff of Education Department.—Notwithstanding anything contained in these rules the matters specified hereinafter, in respect of Tuitional and Supervisory, staff of the Education Department of a Mahapalika shall be regulated and governed by rules to be made separately by the Government from time to time—

- (a) Conditions under which Mahapalikas may create educational posts for such staff.
- (b) Designations and grades of these posts.
- (c) Qualifications for the posts.
- (d) Age and exemptions from age restrictions.
- (e) Salaries, emoluments and allowances.
- (f) Method and source of recruitment,
- (g) Appointment, promotion, and confirmation,
- (h) Punishment, appeals and representations,
- (i) Other conditions of service.

PART II

Appointments

A—Appointment in Consultation with the Public Service Commission.

12. Procedure for direct recruitment.—(1) Where appointment to a post has to be made by direct recruitment in consultation with the Commission, the Mukhya Nagar Adhikari shall on behalf of the appointing authority request the Commission to make the selection and shall inform the Commission sufficiently in advance about the particulars of the post and shall specify all requisite detail as to the nature of the vacancy, qualifications prescribed, scale of pay, method of recruitment and the date from which the vacancy is likely to occur. He shall also indicate whether any post is reserved for candidates belonging to the Scheduled Castes.

(2) The Commission shall decide whether the selection shall be made by holding an interview or a competitive examination thereafter advertise the post and invite applications from the intending candidates on the application form prescribed by the Commission and obtainable from the Secretary to the Commission on payment of such fee as may be fixed by the Commission.

(3) *Selection by interview.*—Where appointment has to be made merely on the basis of interview by the Commission, the following procedure shall be followed :

- (i) The Commission shall scrutinize the applications received by them and require such candidates as seen best qualified for appointment under these rules to deposit the requisite interview fee and to appear before them for interview at their own expense ;
- (ii) In the case of technical posts, the Commission will request the appointing authority to nominate a technical advisor for being associated with the Commission during interview of the candidates ;
- (iii) After the interview, the Commission shall prepare a list of candidates whom they consider most suitable for appointment arranged in order of preference and containing where possible more names than the number of vacancies as indicated below :
 - (a) Where the number of vacancies does not exceed four, twice the number ;
 - (b) Where the number of vacancies exceeds four, a number up to 50 per cent in excess of the number of such vacancies.

The Commission shall then forward his list to the Mukhya Nagar Adhikari.

(4) In case of posts covered under sub-section (1) of section 107, the Mukhya Nagar Adhikari shall place the list received from the Commission, before the Nagar Pramukh who shall make the appointments in the order of preference indicated by the Commission.

(5) In case of posts which fall under sub-section (2) (b) of section 107, the Mukhya Nagar Adhikari shall make the appointments himself in the order of preference indicated by the Commission.

(6) If a post is covered under sub-section (2) (a) of section 107, the Mukhya Nagar Adhikari shall forward the list received from the Commission to the Mukhya Nagar Lekha Parikshak who shall make the appointment in the order of preference indicated by the Commission.

(7) *Recruitment by competitive examination.*—Where recruitment has to be made as a result of competitive examination held by the Commission—

- (a) The Commission shall in consultation with the appointing authority lay down the syllabus, make all necessary arrangements to hold the examination and charge such fee as they might consider necessary.
- (b) The Commission shall publish the results of the examination in the press and shall forward a copy of the mark-sheet of the candidates considered by them to be suitable for appointment in the order of merit to the Mukhya Nagar Adhikari who shall, in the case of posts for which he is not himself the appointing

authority, pass them on to the appointing authority concerned. The appointments shall be made in the order of merit as disclosed by the result of the examination after obtaining the certificate of physical fitness and verification of character and antecedents and subject to the reservation of vacancies for Scheduled Caste candidates.

- (c) The Commission shall thereafter forward to each candidate the marks obtained by him at the examination and shall in due course, forward a copy of the mark-sheet of all the candidates admitted to the *viva voce* test, if any, to each candidate who appeared at the *viva voce* test.

13. Procedure for recruitment by promotion.—(1) For purposes of recruitment by promotion, a selection on the basis of seniority, subject to the rejection of the unfit, shall be made by a Departmental Selection Committee consisting of the Mukhya Nagar Adhikari as Chairman, the Mukhya Nagar Lekha Parikshak and the Head of the Department for which the appointment is to be made from among all the eligible servants of the Mahapalika who have put in the required length of service on the first day of January in the year in which the selection is made :

Provided that if the appointment is to be made to a post which is immediately under the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, the Selection Committee shall consist of the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, as the case may be, as Chairman, and two other officers of the Mahapalika, not belonging to the Department for which appointment is to be made, who shall be nominated by the Executive Committee, as members.

(2) The Mukhya Nagar Adhikari shall forward to the Commission the name or names of the person or persons selected together with all the relevant papers including the character rolls and personal files, if any, of all the eligible candidates and the gradation list showing therein the reasons for passing over the seniors, if any.

(3) The Commission shall consider the selection made by the Selection Committee and may, either concur with the selection made by the Selection Committee or express its disagreement and make its own recommendations.

(4) If the Commission has concurred with the selection made by the Selection Committee, the appointments will be made accordingly, but if there has been no such concurrence, the appointing authority may accept the recommendations of the Commission or cause a reference to be made to the Government under subsection (6) of section 107 and thereupon appointments will be made according to the decision of the State Government.

14. Appointments.—(1) Subject to the provisions of rule 8, the appointing authority shall in respect of post to be filled by direct recruitment make appointments on the occurrence of substantive vacancies in the manner prescribed by rules 12 and 13.

(2) The appointing authority shall make appointments in temporary and officiating vacancies also from the list of candidates recommended by the Commission. If the list is exhausted or if no candidate is available in that list, the appointing authority may, without consultation with the Commission, make appointments in such vacancies, for a period not exceeding one year, from amongst persons possessing the qualifications prescribed for recruitment to those posts.

15. Procedure for absorption of existing employees.—Where consultation of the Commission is necessary under the Act before making appointment of any servant referred to in clause (e) of section 577 to any post created under the Act, a reference shall, before making such appointments, be made by the Mukhya Nagar Adhikari to the Commission to determine the suitability of the candidates.

16. Procedure in case of difference of opinion.—Where the appointing authority disagrees in whole or in part with any recommendation of the Commission, the Mukhya Nagar Adhikari shall forthwith forward to the Government all the connected papers together with the grounds on which the recommendations of the Commission are not considered acceptable. The Government shall consider the grounds and communicate to the Mukhya Nagar Adhikari and the Commission, their decision which shall be final.

B—Appointments on the Recommendations of Selection Committee

17. By direct recruitment.—Where appointment to a post under sub-section (3) of section 107 is to be made by direct recruitment, to Selection Committee constituted under sub-section (4) of the said section shall decide whether the selection shall be made by holding an interview, or a written examination or both.

18 (1) The appointing authority shall invite the names of candidates from the District Employment Exchange and affix on the notice board of the Mahapalika a notice specifying the required number of vacancies for the posts and the qualifications of the departments of the Mahapalika for information of such servants who fulfil the qualifications required for the posts. A reasonable time-limit shall be fixed by the appointing authority for the receipt of names from the District Employment Exchange and the applications from the servants of the Mahapalika. Where no name is forwarded by the District Employment Exchange or application received from any servant of the Mahapalika within the fixed time or if the number of names forwarded by the District Employment Exchange and the applications received from the servants of the Mahapalika is less than four times the number of vacancies notified, the appointing authority shall invite applications directly by advertisement in prominent daily newspapers including local newspapers, if any. The applications received, including the names forwarded by the District Employment Exchange, shall be scrutinised by the appointing authority and a list of the applicants qualified for the posts shall be prepared and placed before the Selection Committee along with the applications in original and the particulars shall be sent by the District Employment Exchange.

(2) The applications shall be in the form prescribed by the appointing authority and obtainable from the Mukhya Nagar Adhikari.

(3) In case a written examination is to be held, the Selection Committee shall lay down the syllabus in consultation with the appointing authority who shall make all necessary arrangement for holding the examination.

19. After the selection has been made by the Committee, the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, as the case may be, shall make the appointment in accordance with the recommendations of the Committee.

20. By promotion.—(1) For the purpose of recruitment by promotion a selection on the basis of seniority subject to the rejection of the unfit, shall

be made from among all the eligible servants of the Mahapalika who have put in the required length of service on the first day of January of the year in which the selection is made.

(2) The appointing authority shall cause to be placed before the Selection Committee all the relevant papers including the character rolls and personal files, if any, of all the eligible candidates and the gradation list.

(3) The appointing authority shall make the appointments in accordance with the recommendations of the Selection Committee.

C—Appointment by Heads of Departments

21. By direct recruitment.—For making direct recruitment the appointing authority shall first decide whether the selection shall be made by holding an interview or a written examination or both. Thereafter applications shall be invited from the District Employment Exchange as well as from the qualified servants already working in the Mahapalika who may desire to be considered for the posts to be filled. A reasonable time-limit shall be fixed by the appointing authority for the receipt of names from the District Employment Exchange and the applications from the servants of the Mahapalika. Where no such name or application is received within the fixed time or if the number of names and applications received is less than four times the number of vacancies notified the appointing authority shall invite applications directly by advertisement in prominent daily newspapers including local newspapers, if any. Applications received including the names forwarded by the District Employment Exchange shall be scrutinized by the appointing authority and a selection shall be made by it therefrom. After the selection has been made the appointing authority shall announce the result in the order of merit and then proceed to make the appointment accordingly.

22. By promotion.—Appointments by promotion shall be made by the Head of Department on the basis of seniority subject to the rejection of the unfit, from among all the eligible servants of the Mahapalika. If in making an appointment a senior servant is superseded, the grounds for supersession shall be recorded.

23. Probation.—(1) All persons appointed to posts under the Mahapalika in or against a substantive vacancy shall be placed on probation for a period of one year :

Provided that in the case of posts carrying an initial salary of Rs. 200 and above, the probation period shall be of two years :

Provided also that continuous service rendered in a post in a temporary or officiating capacity, if it is satisfactory may be taken into account by the appointing authority in computing the period of probation prescribed for that post :

Provided also that this sub-rule shall not apply to persons—

- (i) who were permanent servants of the Municipality, Improvement Trust, Development Board or Local Authority referred to in clause (e) of section 577 of the Act upon their appointment under clause (f) of that section ;
- (ii) who are servants of the Government and whose services have been lent to the Mahapalika ;

- (iii) who are appointed against substantive vacancies for short periods not exceeding four months pending completion of formalities for filling the vacancy on a permanent basis :

Provided further that the appointing authority may in special cases extend the probation for a total period not exceeding one year.

(2) If it appears at any time during or at the end of the period of probation or extended period of probation that a probationer has not made sufficient use of his opportunities or if he has otherwise failed to give satisfaction, he may be discharged from service or be reverted to his substantive post if he holds one.

(3) A person discharged from service under sub-rule (2) shall not be entitled to any compensation.

24. Confirmation.—A probationer shall be confirmed in his appointment at the end of the period of probation or extended period of probation if his work and conduct have been found to be satisfactory and his integrity is certified.

25. Criteria for crossing Efficiency Bar—No person shall be allowed to cross an efficiency bar unless the appointing authority is satisfied that he had been working efficiently and to the best of his ability and unless his integrity is certified.

26. Canvassing.—No recommendation either written or oral other than that required under these rules, shall be taken into consideration. Any attempt on the part of a candidate to enlist support, directly or indirectly for his candidature by other means shall disqualify him for appointment.

PART III

Punishment and Appeal

27. Punishment.—Subject to the provisions of section 110 of the Act, the following penalties may, for good and sufficient reasons and as hereinafter, provided, be imposed upon the servants of the Mahapalika by the authority which is competent to make such appointments under section 107 of the Act, notwithstanding that such an appointment in any particular case may have been made under section 577 (f) (2) of the Act, namely :—

- (i) fine in case of servants belonging to the inferior service only ;

Provided that the total amount of the fine shall not ordinarily exceed half month's pay of the servant concerned and it shall be deducted from his pay in instalments not exceeding one quarter of his monthly salary ;

- (ii) censure ;

- (iii) withholding of increments including its stoppage at an efficiency bar ;

- (iv) recovery from pay of the whole or part of any pecuniary loss caused to the Mahapalika by negligence or breach of orders ;

1. Published in the U. P. Gazette, dated 4th March, 1967, Part I-A, p. 310, under notification No. 3521-B (Ni-18) (San-3) IX/6-48-Corp. 64, dated 27th February, 1967.

- (v) suspension ;
- (vi) reduction to a lower post or time-scale, or to lower stage in a time-scale ;
- (vii) removal from the service of the Mahapalika which does not disqualify from future employment ;
- (viii) dismissal from the service of the Mahapalika which ordinarily disqualifies from future employment.

Explanation.—The discharge—

- (a) of a person appointed on probation during or at the end of the period of probation ; or
- (b) of a person appointed otherwise than under contract to hold a temporary appointment on the expiration of the period of the appointment or at any time in accordance with the terms of appointment ; or
- (c) of a person engaged under contract in accordance with the terms of his contract ;

does not amount to removal or dismissal within the meaning of this rule."

28. Suspension.—A servant of a Mahapalika against whose conduct an inquiry is contemplated or is proceeding, may be placed under suspension pending the conclusion of the inquiry at the discretion of the appointing authority. Enquiry in this rule includes the arriving at some decision on the basis of the enquiry.

Note.—As a rule, suspension should not be resorted to unless the allegations against the servant are so serious that, in the event of their being established, they may ordinarily be expected to warrant his dismissal, removal, or reduction in rank or unless the continuance in office of the servant concerned is likely to hamper or prejudice the course of enquiry. Suspension, where deemed necessary should, as far as possible, immediately precede the framing of charges and their communication to the servant charged.

29. Where a servant has been placed under suspension as provided hereinbefore and the inquiry into his conduct results in his dismissal or removal from service, the order of dismissal or removal shall take effect from the date of such order.

30. Where suspension is ordered pending enquiry, the procedure for determining the period for which the suspension may extend, the subsistence allowance that shall be paid during such period and the manner in which the period of suspension shall be treated in case of reinstatement of a suspended servant shall be the same as may from time to time be applicable to the servants of the Government.

31. Procedure for disciplinary proceedings.—(1) No order (other than an order based on facts which have led to his conviction on a criminal charge) of dismissal, removal or reduction in rank (which includes reduction to a lower post or time-scale or a lower stage, in a time-scale but excludes the reversion to a lower post of a person who is officiating in a higher post), shall be passed on any servant of the Mahapalika unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on

which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged and which shall be so clear and precise as to give sufficient indication to the charged servant of the facts and circumstances against him. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may for sufficient reason to record in writing refuse to call a witness. Neither the Mahapalika nor the servants of the Mahapalika shall be entitled to be represented by a counsel. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The officer conducting the enquiry may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged servant.

(2) This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged.

(3) This rule shall also not apply where it is proposed to terminate the employment of either a temporary servant, or of a probationer whether during or at the end of the period of probation. In such cases a simple notice of termination, which in the case of temporary servant, must conform to the conditions of his service, will be sufficient.

32. (1) After an inquiry against a servant has been completed and after the punishing authority has arrived at provisional conclusions in regard to the penalty to be imposed, the servant charged shall, if penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under rule 31 excluding the recommendations, if any, in regard to punishment made by the officer conducting the inquiry and asked to show cause by a particular date, which affords him reasonable time, why the proposed penalty should not be imposed on him :

Provided that if for sufficient reasons the punishing authority disagrees with any part or whole of the proceedings prepared under rule 31, the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be communicated to the officer or servant charged along with the copy of the proceedings under rule 31.

(2) Every order of dismissal, removal or reduction in rank shall be in writing and shall specify the charge or charges brought, the defence, if any, and the reasons for the order.

33. Before a final decision to impose the punishment of dismissal, removal or reduction in rank is taken in respect of a servant of a Mahapalika whose appointment has been made in consultation with the Commission under section 107, the appointing authority shall cause a reference of the matter to be made to the Commission furnishing it with all the relevant papers on the subject. The Commission shall after considering the facts of the case advise the appointing authority through the Mukhya Nagar Adhikari, as to the liability of the servant to punishment and as to the nature of the punishment that

may be imposed on him. If in any exceptional case, it is not possible ultimately (i. e., after further correspondence to accept the Commission's advice, a full statement of reasons for disagreeing with the Commission's proposals shall be placed on record and communicated to them.

34. (1) Wherever the punishing authority is satisfied that good and sufficient reasons exist for adopting such a course it may impose the penalty of—

(a) censure, or

(b) stoppage of increment at an efficiency bar :

Provided that it shall not be necessary to frame formal charges against the servant concerned or to call for his explanation.

(2) In all cases where the punishing authority imposes the penalty of—

(a) withholding increments in the time-scale at stages where there is no efficiency bar, or

(b) recovery from pay of the whole or part of any pecuniary loss caused to the Mahapalika by negligence or breach of orders,

formal proceedings embodying a statement of the offence or fault, the explanation of the person concerned, and the reasons for the punishment shall be recorded :

Provided that it shall not be necessary to record such proceedings in cases where a servant's increment in the time-scale of his pay, at any stage other than an efficiency bar, is stopped due to his integrity remaining uncertified.

¹35. Appeal.—(1) Every servant of the Mahapalika shall be entitled to appeal as hereinafter provided from an order passed by a competent authority :—

(a) imposing upon him any of the following penalties specified in rule 27 :

(i) reduction to a lower post or time-scale or to a lower stage in time-scale ;

(ii) removal from the service of the Mahapalika which does not disqualify from future employment ; and

(iii) dismissal from the service of the Mahapalika which ordinarily disqualifies from future employment ;

(b) discharging him in accordance with the terms of the contract if he has been engaged on a contract for a fixed or for an indefinite period and has rendered under such contract continuous service for a period exceeding five years at the time when his services are terminated.

(2) In the case of other penalties specified in rule 27 or in cases in which a servant might have cause of grievance against an order passed by a compe-

1. Published under Notification No. 1063-B (Ni-18) (San-4)/XI—Cl—Corp. (iv) 57, dated 4th August, 1967, in the *U. P. Gazette*, dated 12th August, 1967 Part I-A.

tent authority relating to any matter concerning his service the absence of a right of appeal shall not debar the punished or the aggrieved servant from making a representation to the appropriate appellate authority specified in rule 36 within thirty days of the date of communication of the order of punishment or of the accrual of the cause of grievance, as the case may be.

36. Appellate authorities.—(1) In the case of servant appointed by the Nagar Pramukh in consultation with the Commission, under sub-section (1) of section 107, an appeal or representation, as the case may be, shall lie to the Government.

(2) In the case of a servant appointed by the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak under sub-section (2) or sub-section (3) or sub-section (5) of section 107, an appeal or representation, as the case may be, shall lie to the Commissioner of the Division.

(3) In the case of a servant appointed by a Head of a Department other than the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak under sub-section (1) of section 107, an appeal or representation, as the case may be, shall lie to the Mukhya Nagar Adhikari.

37. Manner of presenting appeal or representation and time-limit.—(1) Every person preferring an appeal or representation, as the case may be, shall do so separately and in his own name.

(2) No appeal or representation shall be entertained unless it is submitted within thirty days of the date on which the order of punishment appealed against is communicated to the appellant.

(3) Every appeal or representation shall be addressed to the appellate authority specified in rule 36 and shall be submitted by the appellant through the Head of the Department to which he belongs or belonged. Unless the appeal or representation is preferred against his own order, the Head of the Department shall forward it within ten days of its receipt by him to the authority against whose order the appeal or representation is preferred.

(4) The authority against whose order the appeal or representation, as the case may be, is preferred shall forward it with his parawise comments thereon along with all connected records and relevant papers to the authority competent to decide the appeal or representation within thirty days of its receipt by him from the Head of the Department.

(5) Every appeal or representation shall contain all material statements and arguments relied upon by the servant. It shall contain no disrespectful or improper language and shall be complete in itself.

(6) The appellant may, if he so desires, send an advance copy of the appeal direct to the appellate authority which will then call for the appeal through the proper channel if it is not received within the time-limits prescribed in sub-rule (4).

38. Orders on appeals by appellate authority.—The appellate authority shall consider—

(a) whether the facts on which the order was based have been established ;

(b) whether the facts established afford sufficient ground for taking action ; and

- (c) whether the penalty imposed is excessive, adequate or inadequate ; and after such consideration shall pass such order as it thinks proper :

Provided that whenever any appellate authority proposes to enhance the punishment, the servant concerned shall be given an opportunity to show cause against the proposed enhancement.

39. An authority from whose order an appeal or representation is preferred under these rules shall give effect to any order passed on the said appeal or representation by the competent authority.

40. The pay and allowances of a servant who is dismissed or removed from service shall cease to accrue from the date of such removal or dismissal.

41. (1) The Government may at any time before the expiry of one year from the date of communication of the final orders call for the record of any appeal decided by the appellate authority prescribed in sub-rule (2) of rule 36 and if in its opinion there has been any grave miscarriage of justice on account of misinterpretation of law or otherwise, it may revise the order of the appellate authority :

Provided that where it is proposed to enhance the penalty imposed by any such order, the servant concerned shall be given an opportunity of showing cause against the proposed enhancement.

(2) The Commissioner of the Division may exercise similar powers and those prescribed in the foregoing sub-rule (1) in the case of any appeal decided by the appellate authority prescribed in sub-rule (3) of rule 36.

42. The post vacated by a servant who is dismissed or removed from service shall not be filled up substantively till the period of appeal or representation fixed in sub-rule (2) of rule 37 has not expired, or the appeal or representation, if any, preferred against any such order has been finally rejected. The arrangements thus made temporarily shall be reviewed in accordance with the final decision.

PART IV

Miscellaneous

43. **Termination of service.**—The period of office of a permanent servant of a Mahapalika shall not determine until—

- (a) his resignation has been accepted in writing by the appointing authority ; or
- (b) he has given such authority at least three months' notice ; or
- (c) he has paid or assigned to the Mahapalika a sum equal to three months' pay ; or
- (d) he has been given by the appointing authority not less than three months' notice or a sum equal to three months' pay in lieu of notice :

Provided that the service of a permanent servant of the Mahapalika shall not be terminated by notice under clause (d) except where the proposed termination is necessary under some scheme of retrenchment sanctioned by

the Mahapalika and, in all cases, where the services of the juniormost person or persons are not terminated, the reasons for it shall be recorded in writing by the appointing authority and a representation against such termination would lie to the authorities prescribed in rule 36 within thirty days of its communication to the servant concerned.

44. The services of a temporary servant of a Mahapalika, other than the persons referred to in clause (e) of section 577 of the Act, shall be liable to termination at any time by one months' notice in writing given either by the servant to the appointing authority or by the appointing authority to the servant :

Provided that in the case of notice by the appointing authority the latter may substitute for the whole or part of this period of notice, pay in lieu thereof:

Provided further that it shall be open to the appointing authority to relieve a servant without any notice by such servant or accept notice for a shorter period, without requiring the servant to pay any penalty in lieu of notice :

Provided also that in case of direct appointments made in short and leave vacancies it shall not be necessary for the appointing authority to give any notice or any pay in lieu thereof before terminating the service.

(2) In this rule "temporary" service means officiating and substantive service in a temporary post and officiating service in a permanent post under the Mahapalika.

(3) Nothing in this rule shall apply to—

- (a) servants engaged on contract, or
- (b) servants not in wholtime employment, or
- (c) servants paid out of contingencies, or
- (d) servants employed in work charged establishment, or
- (e) Government servants lent to Mahapalika on deputation.

45. Leave, leave allowances, officiating pay, fees and honoraria.—

(1) All matters relating to leave and leave allowances shall be regulated in the manner applicable to Government servants under the unified leave rules introduced with effect from September 1, 1949 (U. P. Fundamental and Subsidiary Rules) as amended from time to time.

(2) Officiating pay or officiating allowance, fees and honoraria shall be admissible to the Mahapalika servants on the same terms and conditions as are applicable to Government servants under the U. P. Fundamental and Subsidiary Rules.

46. The provisions of the U. P. Fundamental Rules contained in Financial Handbook, Volume II, (Parts II to IV) and Travelling Allowance Rules given in Financial Handbook, Volume III, shall in so far as they are not inconsistent with the provisions of the Act or the rules apply to the servants of the Mahapalika in respect of such matters as are not covered by these rules.

147. Retention and retirement of servants.—(1) Subject to the provisions of sub-rule (2), the age of retirement from service of all servants of the Mahapalika below the age of sixty years on June 30, 1964 or appointed thereafter shall be sixty years beyond which no one shall ordinarily be retained in the service of the Mahapalika.

(1) Subject to the provisions of sub-rule (2), the age of retirement from service of all servants of the Mahapalika below the age of sixty years on June 30, 1964 or appointed thereafter shall be sixty years beyond which no one shall ordinarily be retained in the service of the Mahapalika.

(2) The appointing authority may require a servant to retire on his attaining the age of 58 years, on three month's notice, if the servant concerned is physically unfit or is inefficient :

Provided that nothing in this sub rule shall apply to those servants of erstwhile Municipal Board and the Improvement Trust who were fifty years of age or above on December 31, 1955.

(3) A servant of the Mahapalika may on attaining the age of 58 years voluntarily retire after giving three months' notice to the appointing authority. In the case of servants against whom disciplinary proceedings are pending or contemplated, such notice shall be effective only when it is accepted by the appointing authority. A notice once given by the servant shall not be withdrawn without the permission of the appointing authority.

(4) On or before the first day of September in each year, a list shall be prepared in the form below of all servants of a Mahapalika whose age during the next financial year will reach 60 years. The names of servants who have been granted an extension of service beyond the age of 60 years shall also be included in the list.

(5) Every appointing authority shall consider the list in so far as it relates to the posts of which he is the appointing authority and definite orders shall be passed by him as to the retention or retirement of or the grant of extension to every servant mentioned in the list.

(6) Extension in service may be allowed up to the age of 62 years, for special reasons to be recorded by the appointing authority :

Provided that no extension of service shall be allowed —

(1) for any period exceeding one year at a time ; or

(2) unless the servant concerned is physically fit and efficient.

(7) For the purpose of this rule, the age of a servant shall be determined with reference to his date of birth as recorded in the High School Examination certificate or in the certificate of an examination recognised by Government as equivalent thereto or if there is no such certificate with reference to his date of birth as recorded in the Hindustani Final Examination or Junior High School Examination or as entered in the Scholar's Register of any institution recognised by Government. Where there is no such authentic record of the age of a servant or where the servant has not studied in any

recognised institution it would be permissible to examine other reliable documentary evidence such as entries in the servicebook, certified copy of entry in the birth register, the affidavit of the parent or guardian, the production of the horoscope or such other record or the production of a medical certificate by the Civil Surgeon of the district. The decision of the appointing authority as to the correct age of a servant shall be final.

List of servants of the Mahapalika who will reach the age of retirement or who are on extension of service in the financial year.....

| Serial no. | Name | Designation | Salary | Age on 31st March, next | | Date on which he reaches the age of retire- ment or the extension expires | Length of ser- vice on 31st March next | Recommendation of the im- mediate supe- rior authority | Orders passed by the appoint- ing authority |
|---------------|------|-------------|--------|----------------------------|-------|--|--|--|---|
| | | | | Year | Month | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |

48. Appointment of relations.—(1) No person who is relation of a member of the Mahapalika, shall be appointed to any post under the Mahapalika except with the prior sanction of the Government where the initial salary of the post is Rs. 200 or more, and of the Commissioner of the Division in other cases.

Explanation.—For the purpose of this rule, “relation” means father, grandfather, father-in-law, paternal or maternal uncle, son, grandson, son-in-law, brother, nephew, paternal or maternal first cousin, wife’s brother and sister’s husband, husband, husband’s brother, husband’s sister, wife’s sister, wife, daughter, daughter-in-law, sister, sister-in-law, being the wife of a brother or first cousin, mother, mother-in-law, aunt—maternal or paternal.

(2) If any appointment is made in contravention of sub-rule (1), the Government or the Commissioner of the Division, as the case may be, whose sanction is necessary under sub-rule (1), may on its or his own motion or on the application made by any person, and after giving reasonable opportunity to the appointing authority to show cause why the appointment should not be set aside, declare the appointment to be invalid, and thereupon the appointing authority shall immediately discharge the person so appointed.

(3) Where any relation within the meaning of sub-rule (1) of a servant of a Mahapalika, is elected as a member of the Mahapalika or the Nagar Pramukh, he shall immediately inform the Mukhya Nagar Adhikari in writing about his relationship with such member or Nagar Pramukh. The Mukhya Nagar Adhikari shall, as soon as may be thereafter, place the information before the Executive Committee.

49. Employment by Mahapalika of persons punished by removal or dismissal from the service of Government or of any local authority.—No person shall be employed in the service of the Mahapalika who has been punished by removal or dismissal from the service of Government or of any local authority or any educational institution recognized and/or aided by Government or been led to resign his appointment as an alternative to such punishment by removal or dismissal, or who has undergone a sentence of imprisonment for a criminal offence involving moral turpitude :

Provided that a person who has been dismissed on any ground other than the ground of his having been convicted for a criminal offence involving moral turpitude, may be employed by the Mahapalika with the previous sanction of the Government.

50. House-building advances or advances for purchase of conveyances.—The rules for the time being in force in respect of advances to servants of the Government for construction of houses or purchase of conveyances shall *mutatis mutandis* apply to the servants of the Mahapalika, with the following modifications :

(a) The authority empowered to sanction all such advances, except an advance for the purchase of a bicycle, shall be the Executive Committee of the Mahapalika which shall consider such proposals on the specific recommendation of the Mukhya Nagar Adhikari.

(b) The authority empowered to sanction advances of bicycles shall be the Mukhya Nagar Adhikari.

(c) The advances shall be made from the Mahapalika Fund.

51. Grant of free residence or house-rent allowance.—The Execu-

tive Committee of a Mahapalika may allow rent-free residence or house-rent allowance in lieu thereof to the extent of the actual rent paid ten per cent. of the monthly pay exclusive of all allowances at the time of the fixation of the house-rent allowance initially, whichever is less, to any servant of the Mahapalika who fulfils any of the conditions set forth below, and not otherwise :

- (i) He is required in the interest of his official work to live in a specified locality or building.
- (ii) Because of the nature of his duties, he is with some regularity called or liable to be called on duty at any time in the day or night.
- (iii) He is required, in addition to his regular duties to exercise direct supervision over resident students and is accordingly required to live in close proximity to a hostel :

Provided that in the last-mentioned condition, the concession shall not be extended to more than one servant for one hostel :

Provided further that no house-rent allowance shall be admissible to a servant who lives in a house of which he himself is the owner

52. Every bill relating to house-rent allowance, shall be accompanied by a certificate in the form given below duly signed by the Head of the Department concerned and testifying that the person or persons in respect of whom the house-rent allowance has been drawn actually occupied rented house or houses, as the case may be, during the period to which the allowance relates and individually paid the amount or amounts of rent drawn in the bill.

Form of Certificate

“Certified that all the persons for whom house-rent allowance has been drawn in this bill, actually occupied a rented house for which they paid rent as shown in this bill and are entitled to the allowance.”

53. **Officers rent to Mahapalika.**—The services of a Government servant may be lent to Mahapalika on such terms and conditions as the Government may in each case decide.

54. A Government servant lent to a Mahapalika may, at any time be recalled by the Government.

55. When the appointing authority decides that disciplinary proceedings should be started against a Government servant under the employ of the Mahapalika, a copy of the decision together with all relevant material and records of the case, shall be forwarded by the Mukhya Nagar Adhikari to the authority competent to punish the employee as Government servant and such authority shall thereafter take necessary action in accordance with the provisions contained in the disciplinary rules of the Government service to which he belongs subject to the general or special orders of Government issued from time to time in this behalf.

56. **Maintenance of Service Books.**—Except as provided in rule 57, service books shall be maintained in Form no. 13 of the Financial Handbook, Volume II, (Parts II to IV) for each servant of the Mahapalika holding a substantive post on a permanent establishment, or officiating in a post or holding a temporary post. Every step in the official life of the servant shall be recorded in the service book, and each entry attested by the Head of his

Department or by his immediate superior, if the servant is himself Head of the Department.

57. Service books shall not be maintained in respect of inferior servants of all categories and servants officiating in posts or holding temporary posts, who are recruited for purely temporary or officiating vacancies for short periods and are not eligible for permanent employment.

58. A service book shall be supplied at his own cost to every servant on his first appointment. It shall be kept in the custody of the Head of the Department in which he is serving and shall be transferred with him upon every transfer from one department to another. The Head of the Department may on his own responsibility entrust the custody of service books to a ministerial head of his office.

59. It shall be the duty of the Head of the Department to ensure that all entries in the service books are duly made and attested.

60. The entries in the service book shall be made neatly in ink and no corrections shall be made either by erasing or overwriting a previous entry. All corrections shall be properly attested.

61. If a servant retires on attaining the age of superannuation, his service book may, if desired, be returned to him after all the formalities with regard to his retirement are completed and the payment on account of his salary, allowances and bonus, etc., have been audited. Where a service book is not returned, it shall be retained for a period of five years after retirement, after which it shall be destroyed. In case of the death of a servant, his service book may be given to his relatives on application. Should no application be made within six month of his death, the service book shall be destroyed

62. The service book of a servant who retires, resigns or is discharged from the service without fault prior to his reaching the age of superannuation, shall not be returned to him before the expiry of five years from the date of retirement, resignation or discharge. If he applies for it within six months after the expiry of this period, it may be given to him after an entry about his retirement, resignation or discharge has been made therein. Should no application be made within this time-limit, the service book shall be destroyed.

63. When the service of a servant is terminated by dismissal or removal, his service book shall be retained for a period of five years after the date of dismissal or removal, after which it shall be destroyed.

64. The service book of a servant who has been dismissed or removed, and who is afterwards re-employed shall on requisition be sent to the head of the office in which he is re-employed. A similar course shall be adopted when a servant has been discharged without fault or has resigned and is subsequently re-employed.

65. It shall be the duty of every servant to see that his service book is properly maintained in accordance with the foregoing rules. A servant shall when required to sign an entry in his service book or at any other time on his request, be given an opportunity to examine the service book in order to satisfy himself that it is being maintained properly.

66. The following procedure shall be observed when entries in the service book of a servant are sought to be verified with the help of the pay bills :

- (a) The periods of temporary and officiating service shall be verified by the head of the office from the pay bills concerned and the fact of verification recorded under proper attestation in the service books.
- (b) The verification of the service books shall be taken up in the month of January each year by the Head of the Department who after satisfying himself that the services of the servant concerned are correctly recorded in his service book, shall record and sign a certificate in the memorandum of verification in Form no. 15 of the Financial Handbook, Volume II, (Parts II—IV) which shall be made part of the service book.
- (c) When a servant is transferred from one office to another, the Head of the Department under whom he was originally employed shall record in the service book under his signature the result of the verification of service with reference to pay bills and other connected records in respect of the whole period during which the servant was employed under him, before forwarding the service book to the department where the services are for transferred.

67. Personal certificates of character shall not be entered in column 15 of the service book but if a servant is reduced to a lower substantive post, the cause of the reduction shall be briefly stated thus : "Reduced for inefficiency", Reduced owing to revision of establishment, etc."

68. Every period of suspension from employment and every other interruption in service shall be noted, with full details of its duration, by an entry written across the page, and attested by the Head of the Department. The Head of the Department shall be personally responsible to see that these entries are made with regularity.

69. (1) Service rolls in Form no. 14 of the Financial Handbook, Volume II, (Parts II—IV) to be supplied at the cost of the Mahapalika, shall be maintained for all inferior servants holding substantive appointments on a permanent establishment, and for those officiating in a post or holding a temporary post except those who are appointed in a purely temporary or officiating vacancy for a short period only. The roll shall be carefully examined and under "Details of Service" shall be recorded the rank of each person, his promotion, reduction in rank or other punishment, the period of his absence from duty on leave or without leave, the interruptions in his service and every other incident in his service which may involve forfeiture of portions of his service. Full particulars in regard to every entry shall be given in the remarks column.

(2) The procedure laid down in rule 66 for the verification of service from pay bills shall be followed in respect of the inferior employees also.

70. **Maintenance of character rolls.**—(1) Character rolls shall be maintained for all servants, other than the inferior servants, in the form appended to these rules. Annual confidential reports shall be recorded by the authorities hereinafter described in respect of the servants mentioned against each :

- (a) *State Government.*—In respect of the servants appointed by the Government under the Adhiniyam.
- (b) *Nagar Pramukh.*—In respect of the servants appointed by him under the Adhiniyam.

(c) *Mukhya Nagar Adhikari*.—In respect of—

- (i) the servants other than the *Mukhya Nagar Lekha Parikshak*, appointed by the *Nagar Pramukh*.

Explanation.—The *Mukhya Nagar Adhikari* shall make entries in the character rolls of such servants before the *Nagar Pramukh* records his remarks.

- (ii) Servants appointed by him under the *Adhiniyam*.

- (iii) Servants appointed by the Heads of Departments under the *Adhiniyam* except those appointed by the *Mukhya Nagar Lekha Parikshak*.

Explanation.—The *Mukhya Nagar Adhikari* shall make entries in the character rolls of such servants after the Head of Department has recorded his remarks.

- (d) *Mukhya Nagar Parikshak*.—In respect of the servants appointed by him under the *Adhiniyam*.

- (e) *Head of the Department, other than Mukhya Nagar Adhikari and Mukhya Nagar Lekha Parikshak*.—In respect of the servants appointed by him under the *Adhiniyam*.

(2) A copy of the entry made in respect of the *Mukhya Nagar Lekha Parikshak* shall be furnished to the Government by the *Nagar Pramukh* directy. The Government may approve of the entry recorded by the *Nagar Pramukh* or record their own opinion about the work of the *Mukhya Nagar Lekha Parikshak*.

(3) Annual confidential reports shall ordinarily be recorded in the month of April every year except in the case of servants mentioned in item (b) of sub-rule (1) in whose case entries will be made by the *Nagar Pramukh* before the expiry of his term.

(4) The procedure to be followed in recording annual confidential reports in respect of Government servants lent to the Mahapalika shall be as may be laid down by the Government from time to time.

(5) Every entry in the character roll which may adversely affect the promotion of the servant concerned, shall be communicated to him within three months from the date it is recorded and a note to this effect made in the character roll.

(6) A servant to whom an adverse entry has been communicated, shall be entitled to make a representation to the appellate authority prescribed in rule 36 within 30 days of the communication of the entry to him.

71. (1) Annual confidential report shall also contain an opinion about the integrity of the servant concerned. The form of the integrity certificate shall be as follows :

“Nothing has come to my knowledge which casts any reflection on the integrity of..... His general reputation for honesty is good and I certify his integrity.”

(2) A servant who fails to obtain integrity certificate will be stopped at the efficiency bar or his ordinary annual increment will be stopped. If he is on probation, he will be confirmed until his integrity is certified :

Provided that a servant whose integrity certificate is withheld shall have the right to make a representation to the appellate authority prescribed in rule 36.

72. All orders of appointments, suspension or punishment passed by the Nagar Pramukh in exercise of the powers vested in him under the Adhiniyam shall be issued under the signatures of the Mukhya Nagar Adhikari who shall make it clear therein that the same are the orders of the Nagar Pramukh.

PART V

Provident Fund and Compassionate Allowance

73. ¹**Provident Fund.**—Every Mahapalika shall establish Provident Fund for its whole-time permanent servants and all matters relating to Provident Fund shall, except as provided in rules 74, 75 and 75-A, be governed by the regulations to be framed under clauses (g) and (i) of sub-section (1) of section 548 of the Act.

74. (1) The rate of contribution made by a Mahapalika to the deposit account of a subscriber shall be equal to one-half of the amount subscribed by him but under no circumstances it shall exceed 6 1/4 naya paise in a rupee on the pay as defined in the U. P. Fundamental Rules, of the servant.

(2) A temporary advance may be sanctioned to a subscriber from the amount standing to his credit in the Fund at the discretion of the appointing authority subject to the following conditions :

(a) No advance shall be sanctioned unless the sanctioning authority is satisfied that the applicant's pecuniary circumstances justify it and that it will be expended on the following object or objects and not otherwise ;

(i) to pay expenses incurred in connection with the prolonged illness of the applicant or any person actually dependent on him ;

(ii) to pay for the passage abroad for reasons of health or education of the applicant or any person actually dependent on him ;

(iii) to pay obligatory expenses on a scale appropriate to the applicant's status in connection with marriages, funerals or ceremonies which by his religion, it is incumbent on him to perform.

(b) The sanctioning authority shall record in writing its reason for sanctioning the advance.

(c) An advance shall not, except for special reasons—

(i) exceed three months' pay or half of the total amount at the credit of the subscriber at the time of the application whichever is less at the discretion of the sanctioning authority ;

(ii) be sanctioned until at least twelve months have elapsed after final repayment of all previous advances together with interest thereon ;

1. The Provident Fund's Act, 1925 IXIX of 1925 has been applied to Mahapalika Provident Funds under Notification no. 120 Ma/XI/C—51 Corp-62, dated December 14, 1962.

Provided that in special cases the restrictions laid in clauses (i) and (ii) above, may be waived by the sanctioning authority and subject to such terms and conditions, as may be prescribed by the said authority, temporary advances may be allowed for subscribing to any loan floated or financial scheme launched by Government for nation building purposes :

Provided further that so long as the amount already advanced together with the fresh advance applied for, does not exceed the amount admissible under clause (i) at the time of the sanction of the first advance, special reasons will not be required for the sanction of a second advance or subsequent advances, and such advances may be sanctioned by the sanctioning authority even if the condition mentioned in clause (ii) is not fulfilled.

Explanation.—In this proviso, the expression “the amount already advanced” means the amount, or the sum of amounts actually advanced and not the balance outstanding after any repayments.

75. (1) An advance shall be recovered from the subscriber in such number of equal monthly instalments as the sanctioning authority may direct, but such number shall not be less than twelve, unless the subscriber so elects and more than twenty-four. In special cases where the amount of advance exceeds three month's pay of the subscriber, the sanctioning authority may fix such number of instalments to be more than twenty-four but in no case more than thirty-six. A subscriber may at his option make repayment in a smaller number of instalments than that prescribed. Each instalment shall be a number of whole rupee, the amount of the advance being raised or reduced, if necessary, to admit of the fixation of such instalments.

(2) If more than one advance has been made to a subscriber, each advance shall be treated separately for the purpose of recovery.

(3) After the principal of the advance has been fully repaid, interest shall be paid thereon at the rate of one-fifth per cent. of the principal for each month or broken portion of a month during the period between the drawal and complete repayment of the principal.

(4) Interest shall ordinarily be recovered in one instalment in the month after complete repayment of the principal; but if the period referred to in sub-rule (3) exceeds twenty-months, interest may, if the subscriber so desires, be recovered in two equal monthly instalments.

75-A. (1) Final withdrawals from the Provident Fund may be permitted by the Mukhya Nagar Adhikari to the subscribers for the following purposes :

- (a) For meeting the marriage expenses of their sons and daughters ;
- (b) For the purchase of buildings or acquiring a suitable house including the site for repayment of the outstanding amounts on account of loans already taken for this purpose ; and
- (c) for higher education of children.

(2) The terms and conditions for the grant of such withdrawals shall *mutatis mutandis* be the same as are applicable from time to time to Government servants under the rule making power of the Government.

76. Compassionate allowance.—The Executive Committee may for good and sufficient reason, which shall be placed on record, grant to a servant who while engaged in the performance of duty receives injury to such an extent as to incapacitate him for further employment, or to the widow or other surviving heirs of a servant who in like circumstances dies or is killed, a compassionate allowance, which shall ordinarily not be greater in amount than that to which the servant or his widow or other heir would be entitled if the servant were a Government servant. Where it is proposed to grant a higher amount, the prior sanction of the Government shall be taken.

77. The compassionate allowance granted under rule 76, shall ordinarily be paid in one lump sum but where the circumstances of the case so justify the grant may be made on a yearly basis for a limited period to defray the expenses of the education of the children of the servant subject to the condition that the aggregate of such annual payments does not exceed the total amount of compassionate allowance permissible under rule 76.

78. In considering claims for compassionate allowance, the following principles shall be kept in view :

- (i) Grants must be restricted to cases involving exceptional hardship.
- (ii) Death or incapacitation due to special devotion to duty shall be deemed to establish a strong claim for consideration.
- (iii) Ordinarily preference shall be given to the servants or dependents of servants who have completed at least five years of service.

79. The cases for the grant of compassionate allowance may be considered by the Executive Committee on its own motion and shall be so considered if an application therefor is made in this behalf by a servant or, where he has died or been killed, by his widow or other surviving heir.

PART VI

Conduct Rules

80. In these rules member of the family in relation to a servant shall include—

- (i) the wife, child or step-child of such servant, whether residing with him or not, and, in relation to a servant, who is a woman, the husband residing with her and dependent on her ; and
- (ii) any other person related, whether by blood or by marriage, to the servant or to such servant's wife or husband, and wholly dependent on the servant, but does not include a wife or husband legally separated from the servant, or a child or step-child who is no longer, in any way, dependent upon him or her, or of whose custody the servant has been deprived by law.

81. General.—(1) Every servant shall at all times maintain absolute integrity and devotion to duty.

(2) Every servant shall at all times conduct himself in accordance with the specific or implied orders of the competent Mahapalika authorities regulating the behaviour and conduct.

82. Equal treatment for all.—Every servant shall accord equal treatment to people irrespective of their caste, sect or religion.

83. A servant shall not without previous approval of the Nagar Pramukh—

- (a) accept directly or indirectly on his own behalf or on behalf of any other person ; or
- (b) permit any member of his family to accept any gift, gratuity or reward from any person other than a close relation :

Provided that he may accept or permit any member of his family to accept from a personal friend a wedding present or a present on a ceremonial occasion, of a value not exceeding Rs. 51. All servants shall, however, use their best endeavour to discourage even the tender of such presents.

84. Subscription.—A servant may, with the previous sanction of the Nagar Pramukh, ask for or accept or participate in the raising of a subscription or other pecuniary assistance for a charitable purpose connected with medical relief, education or other objects of public utility ; but it shall not be permissible for him to ask for subscription, etc., for any other purpose, whatsoever.

85. Lending and borrowing money.—Except with the previous sanction of the Nagar Pramukh, no servant shall lend money to or borrow it from any member or servant of the Mahapalika or from any other person residing within the limits of the city :

Provided that a servant may—

- (1) make an advance of pay to a private servant or give a loan of a small amount free of interest to any personal friend or relative ; or
- (2) accept a purely temporary loan of a small amount free of interest from a personal friend or relative or operate a credit account with a *bona fide* banker or, borrow in the ordinary course of business money from a bank, co-operative society or a firm of standing.

86. Holding or acquiring immovable property.—(1) No servant shall, except, after informing the Mukhya Nagar Adhikari, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family :

Provided that any such transaction conducted otherwise than through a regular and reputed dealer shall require the previous sanction of the Nagar Pramukh.

(2) A servant, who enters into a transaction concerning any movable property exceeding five hundred rupees in value, whether by way of purchase or sale or otherwise, shall forthwith report such transaction to the Mukhya Nagar Adhikari :

Provided that no servant shall enter into any such transaction except with or through a reputed dealer or agent of standing, or with the previous sanction of the Nagar Panch.

(3) At the time of first appointment and thereafter at intervals of five years, every servant shall make to the appointing authority through the usual channel a declaration of all immovable property owned, acquired or inherited by him or held by him on lease or mortgage and of shares, and other investments, which may from time to time be held or acquired by him or by any member of his family. Such declarations shall state the full particulars of the property, shares and other investments.

(4) The appointing authority may, at any time, by general or special order, require a servant to submit within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or by any member of his family, as may be specified in the order. Such statement shall, if so required, include details of the means by which or the sources from which such property was acquired.

87. Investments other than those in immovable property.—A servant shall not make or allow any member of his family to make any investment, other than an investment in immovable property permitted by rule or in banks, recognized securities or societies which give him such private interest in matters with which his public duties are connected as would embarrass or influence him in the discharge of his duties, nor shall he speculate in stocks, shares or other securities.

88. Private trade or employment.—No servant shall, except with the previous sanction of the Nagar Pramukh engage directly or indirectly in any trade or business or undertake any other employment :

Provided that a servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character subject to the condition that his official duties do not thereby suffer and that he informs the appointing authority within one month of his undertaking such a work, but he shall not undertake and shall discontinue such work if so directed by the appointing authority :

Provided also that no sanction shall be given to a servant to act as an insurance agent.

89. Participation in auctions.—No servant shall bid in any auction of the property or produce belonging to the Mahapalika either directly or by proxy.

90. Insolvency and habitual indebtedness.—A servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A servant who becomes the subject of a legal proceeding for insolvency, shall forthwith report full facts to the appointing authority.

91. Official informations to be kept confidential.—Save where required by or under any law, or by any general or special order of the Mahapalika or the appointing authority, no servant shall communicate directly or indirectly any document or information which has come into his possession in the course of his duties, or has been prepared or collected by him in the course of those duties whether from official sources or otherwise, to the press or any other person to whom he is not authorized to communicate such document or information.

92. Connection with press or radio.—(1) No servant shall, except with the previous sanction of the Mukhya Nagar Adhikari, own wholly or

in part, or edit, or manage or participate in the editing or managing of, any newspaper or other periodical publication.

(2) No servant shall, except with the previous sanction of the Mukhya Nagar Adhikari, or in the *bona fide* discharge of his duties, participate in a radio broadcast or contribute any article or write any letter either anonymously or in his own name or in any other name to any newspaper or periodical.

93. Taking part in politics.—(1) No servant shall be a member of, or be otherwise associated with, any political party or any organization, which takes part in politics, nor shall he take part in, subscribe in aid of, or assist in any other manner, any movement or organization which is, or which tends directly or indirectly to be, subversive of the Government or the interest of the Mahapalika.

(2) It shall be the duty of every servant to endeavour to prevent any member of his family from taking part in, subscribing in aid of, or assisting in any other manner, any movement or activity which is, or tends directly or indirectly to be subversive of the Government or the interest of the Mahapalika ; and where such a servant fails to prevent a member of his family from taking part in, or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the appointing authority.

(3) If any question arises whether any movement, organization or activity falls within the scope of this rule, the decision of the Government thereon shall be final.

94. Demonstrations and strikes.—No servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to the Government or the Mahapalika or to his conditions of service.

95. Joining of associations by Mahapalika servants.—No servant shall join or continue to be a member of any Service Association of Mahapalika servants—

(a) which has not, within a reasonable period of its formation obtained, on a recommendation of the Mahapalika, the recognition of the Government under the instructions issued by the Government in that behalf ; or

(b) recognition in respect of which has been refused or withdrawn by the Government according to the said instructions.

96. Election to a Local Authority, a Nyaya Panchayat, a Gaon Panchayat or a Legislative Body.—No servant shall canvass or otherwise interfere or use his influence in connection with, or take part in an election to any Legislature, Local Authority, Nyaya Panchayat or Gaon Panchayat :

Provided that—

(1) a servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted ; and

(2) a servant shall not be deemed to have contravened the provisions of this rule by reason only that he assists in the conduct of an

election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation.—The display by servant on his person, vehicle or residence, of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this rule.

97. Direct approach to the members of the Government, etc.—No servant shall approach or attempt to approach any member of Government or of the State Legislature or any member of the Mahapalika or any Government servant on any personal or general question, relating to service matters except through the appointing authority, nor seek or attempt to seek interview with such members or Government servants except by previous appointment and through proper channel.

98. Ventilating grievances through the press.—No servant shall ventilate through the press any personal or general grievance relating to matters concerning his service or the Mahapalika which he is serving.

99. Seeking employment elsewhere.—No servant shall apply for any post under any authority except by making an application through proper channel, nor shall any servant apply or enter into negotiations for his employment on any post not under any Government in the Indian Union except after obtaining through proper channel previous permission in writing from the Government.

100. Criticism of Government.—No servant shall, in any radio broadcast or in any document published anonymously or in his own name, or in the name of any other person, or in any communication to the Press or in any public utterance, make any statement of fact or opinion—

- (i) which has the effect of any adverse criticism of any decision of his superior officers, or of any current or recent policy or action of the Uttar Pradesh Government or the Central Government or the Government of any other State or a local authority ; or
- (ii) which is capable of embarrassing the relations between the Uttar Pradesh Government and the Central Government or the Government of any other State ; or
- (iii) which is capable of embarrassing the relations between the Central Government and the Government of any foreign State :

Provided that nothing in this rule shall apply to any statement made or views expressed by a servant, in his official capacity or in the due performance of the duties assigned to him.

Illustrations

(1) A, a servant, is dismissed from service by the Mahapalika. It is not permissible for B, another servant, to say publicly that the punishment is wrongful, excessive or unjustified.

(2) A public officer is transferred from station A to station B. No servant can join the agitation for the retention of the public officer at station A.

(3) A neighbouring State lays claim to a tract of land lying on the border of Uttar Pradesh. A servant cannot publicly express any opinion on the claim.

(4) If a foreign State terminates the concessions given by it to the nationals of another State, it is not permissible for a servant to publish any opinion on the decision.

(5) If the Central Government imposes duty at certain rates on specified imported-goods, it is not permissible for a servant to express any opinion about rate of such duty.

101. Public demonstrations in honour of servants.—No servant shall, except with the previous sanction of the appointing authority, receive any complimentary or valedictory address or attend any meeting or public entertainment held in his honour or in the honour of any other servant :

Provided that nothing in this rule shall apply to a farewell entertainment of a substantially private or informal character and in honour of a servant on the occasion of his retirement or quitting service.

102. Insurance business.—A servant shall not permit any member of his family to act as an insurance agent within the limits of the city in which he is serving.

103. Vindication of acts and character of servants.—No servant shall, except with the previous sanction of the appointing authority have recourse to the press for the vindication of any official act which has been the subject-matter of adverse criticism or an attack of defamatory character.

Explanation—Nothing in this rule shall be deemed to prohibit a servant from vindicating his private character or any act done by him in a private capacity.

104. Convassing of non-official or other outside influence.—No servant shall bring or attempt to bring whether personally or through a member of his family, any political or other outside influence to bear upon any question relating to his interest in respect of matters pertaining to his service.

Explanation—Any act done by the wife or husband, as the case may be, or any member of the family of a servant and falling within the purview of this rule, shall be presumed to have been done at the instance, or with the connivance of the servant concerned, unless the contrary shall have been proved.

Illustration

A is a servant and *B*, a member of the family of *A*. *C* is a political party and *D* is an organization under *C*. *B* gained sufficient prominence in *C* and became an office bearer of *D*. Through *D*, *B* started sponsoring the cause of *A* to the extent that *B* sponsored some resolutions against *A*'s official superiors. This action which will be in violation of the provisions of the above rule on the part of *B*, shall be presumed to have been done by *B* at the instance, or with the connivance, of *A*, unless *A* is able to prove that this was not so.

105. Unauthorized pecuniary arrangements—No servant shall enter into any pecuniary arrangement with another servant or any other person so as to afford any kind of advantage to either or both of them in any unauthorized manner or against the specific or implied provisions of any rule for the time being in force.

106. Bigamous Marriages.—No male servant of a Mahapalika, who has a wife living, shall contract another marriage nor a female servant of a Mahapalika shall marry a person already having a wife notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him :

Provided that the appointing authority may, if satisfied that there are special grounds for exempting any person from the operation of this rule, refer the matter to the Executive Committee whose decision shall be final.

107. Proper use of amenities.—No servant shall misuse or carelessly use, amenities provided for him by the Mahapalika to facilitate the discharge of his public duties.

108. Payment of purchases.—Unless payment by instalments is customary, or specially provided, or a credit account is maintained with a *bona fide* tradesman, no servant shall withhold prompt and full payment for the articles purchased by him whether the purchases are made on tour or otherwise.

109. Use of service without payment.—No servant shall, without making proper and adequate payment, avail himself of any service or entertainment for which hire or price or admission fee is charged.

110. Use of conveyance belonging to others.—No servant shall, except in exceptional circumstances use a conveyance belonging to a private person or any servant who is subordinate to him.

111. Purchase through subordinates.—No servant shall himself ask or permit any member of his family to ask any person who is subordinate to him, to make purchases, locally or from outstation, on behalf of him or a member of his family whether on advance payment or otherwise :

Provided that this rule shall not apply to the purchases which the inferior staff attached to the servant may be required to make.

112. Interpretation.—If any dispute arises relating to the interpretation of rules 80 to 111, it shall be referred to the Government whose decision thereon shall be final.

PART VII

Deputation of Mahapalika Employees

113. (1) A servant of Mahapalika may, subject to the previous sanction of the Government and his consent, be sent by the Mahapalika, on deputation to any other local body.

(2) The period of deputation should normally be restricted to a maximum of three years. Retention of the services of a particular servant beyond a period of three years, should be allowed in very exceptional cases.

114. A servant, who is on leave other than a leave preparatory to retirement, may be allowed to be sent on deputation only after he has resumed his duties in the Mahapalika.

115. A servant sent on deputation shall be deemed to remain in the same service of the Mahapalika in which he was included in a substantive or officiating capacity immediately before his being sent on deputation and may be given such promotions in that service as the authority competent to order

promotion may decide. In giving promotion, such authority shall take into account—

- (a) the nature of the work performed while on deputation ; and
- (b) the promotion given to juniors in the service in which the question of promotion arises.

116. A servant on deputation shall draw pay from local body to which he is sent on deputation, with effect from the date he hands over charge of his post in the Mahapalika. The amount of his pay, the period of joining time admissible to him and his pay during such joining time will be fixed by the employing authority in consultation with the Mahapalika.

117. When the deputation of a servant is sanctioned, the pay which he shall receive in the service to which he is sent on deputation, must be precisely specified in the order sanctioning the deputation. If it is intended that he shall receive any remuneration or enjoy any concession of pecuniary value in addition to pay and other allowances payable to him by the Mahapalika, the exact nature of such remuneration or concession must be similarly specified. No servant shall be permitted to receive any remuneration or enjoy any concession which is not so specified and if the order is silent on any particular remuneration or concession, it must be assumed that the intention is that it shall not be available.

118. The pay of a servant sent on deputation to a post, the duties of which are similar to those of the post held by him immediately before deputation, shall be fixed at a sum which does not exceed by more than twenty-five per cent of the amount of his last substantive pay in the service of the Mahapalika or if he is officiating in a grade or post from which he is unlikely to revert, 25 per cent of the amount of his last pay drawn, but the special pay or personal pay shall not be taken into account in fixing his pay during the service on deputation.

119. A servant whose pay is fixed as under rule 118, may on the occasion of his substantive promotion on his departmental list or accrual of periodical increments, be granted an equivalent increase plus a sum not exceeding 20 per cent. thereon. He may be given, with the consent of the employing authority a similar benefit on the occasion of each such officiating promotion.

120. In the absence of a specific mention to the contrary in the order sanctioning service on deputation, the pay to be drawn during joining time, shall be that admissible in such service.

121. Specific terms in regard to travelling allowance to be allowed to servants for joining the post on deputation and on reversion therefrom, shall invariably be prescribed by sanctioning authority in consultation and agreement with the local body to which the servant is sent on deputation.

122. A servant who is sent on deputation, shall, if he has been subscribing to the Mahapalika Provident Fund or is eligible to do so, subscribe to the said fund as usual, according to the rate of his pay drawn while in service on deputation.

123. A servant sent on deputation may not, without the sanction of the Government accept a gratuity from the local body under which he is serving on deputation.

124. A servant on deputation may be granted leave and paid leave salary by his employing authority subject to the same conditions which would

have regulated the grant of such leave had he been under the employ of the Mahapalika.

125. A servant reverts from the service on deputation on the date he takes over charge of his post under the Mahapalika but if he takes leave on the conclusion of the service on deputation before joining his post, the date of his reversion will be fixed by the Mahapalika after taking into account the joining time which he takes at the end of his leave before actually taking charge of his post under the Mahapalika.

Illustration

If a servant after service on deputation up to April 30, 1960, proceeds on leave on average pay for three months from May 1, 1960, and on expiry of leave rejoins the Mahapalika service on August 4, 1960 (forenoon), after availing seven days' joining time, then the date of his reversion shall be fixed as August 8, 1960 (forenoon).

126. When a servant reverts from the service of deputation to Mahapalika service, his pay and contribution towards his Mahapalika Provident Fund shall cease to be paid by the local body, under which he has been on deputation with effect from the date of reversion.

127. The local body to which the Mahapalika servant is sent on deputation, may with the consent of the Mahapalika absorb the servant in its permanent service and the servant shall cease to hold a lien on his post in the said Mahapalika with effect from the date of confirmation on such service.

Essential Service

128. The following services of a Mahapalika shall within the meaning of clause (22) of section 2 of the Act, be essential services :

- (1) Medical and Public Health Services ;
- (2) Waterworks and Mechanical Engineering Services ;
- (3) Sweepers,
- (4) Staff of the Lighting Department ; and
- (5) Transport services.

129. (1) No member of an essential service shall—

(a) without the written permission of the Mukhya Nagar Adhikari or any officer authorized by him in this behalf, resign his office, withdraw or absent himself from the duties thereof, without at least two months' notice given in writing to the Mukhya Nagar Adhikari except in the case of illness or accident disabling him for the discharge of his duties or other reason accepted as sufficient by the Mukhya Nagar Adhikari or such officer, or

(b) neglect or refuse to perform his duties or wilfully perform them in a manner which, in the opinion of the Mukhya Nagar Adhikari or such officer, is inefficient.

(2) If the Government is of the opinion that the stoppage of the cessation of the performance of any of the essential services will be prejudicial to the safety or health or the maintenance of service essential to the life of the community in the city, it may, by notification in the *Gazette*, declare that an emergency exists in the city, and that in consequence thereof no member of such of the essential services and for such period as may be specified in the

notification shall, notwithstanding any law for the time being in force or any agreement—

- (a) withdraw or absent himself from his duties except in the case of illness or accident disabling him from the discharge of his duties, or
- (b) neglect or refuse to perform his duties or wilfully perform them in a manner which in the opinion of such officer as the Government may specify in this behalf is inefficent.

(3) Whoever acts or abets the commission of an act which is in contravention of sub-rules (1) and (2), shall on conviction be punished with fine which may extend to Rs. 500 and in case of a continuing breach with fine which may extend to twenty rupees for every day during which the breach continues after conviction for first breach.

FORM OF CHARACTER ROLL

(Rule 70)

1. Name.....
2. Father's name.....
3. Place of residence.....
4. Date of birth.....
5. Office.....
6. Educational qualification.....

Statement of Service

| Name of Mahapalika | Appointment | Pay | Date |
|--------------------|-------------|-----|------|
|--------------------|-------------|-----|------|

Name of relatives in Mahapalika's employment

| Name | Relationship | Office | Mahapalika |
|------|--------------|--------|------------|
|------|--------------|--------|------------|

Remarks recorded by Superior Officers

Notice of commendation or rewards

Notice of censure or
punishment

U. P. NAGAR MAHAPALIKA WATER SUPPLY RULES, 1968

English translation of Swayat Sashan Vibhag Noti. No. 3172-D/IX-B—304-W 61, dated June 25, 1968, published in U. P. Government Gazette, Part I-ka, dated 6th July, 1968, pp. 2006-208.

In exercise of the powers under Section 271 and sub-section (1) of Section 540 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (Act II of 1959), the Governor of Uttar Pradesh has made the following Nagar Mahapalika Water Supply Rules, after their previous publication in Notification No. 317-D/IX-E—304-W-61, dated February 9, 1968, as required under sub-section (2) of Section 540 of Act II of 1959 :

1. **Preliminary.**—(a) These rules may be called the Uttar Pradesh Nagar Mahapalika Water Supply Rules, 1968.

(b) They shall come into force from the date of their publication in the Uttar Pradesh Gazette.

2. **Definitions.**—In these rules unless there is anything repugnant in the subject or context,—

- (1) 'Act' means the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act II of 1959) ;
- (2) 'communication pipe' means a pipe or system of pipes along with fittings thereto, by means of which water is supplied to any building or land from a Mahapalika supply main and includes the connection pipe, consumer's pipe; meter and their fittings ;
- (3) 'connection pipe' means a pipe including fittings from the ferrule in the Mahapalika supply main up to the stop-cock, connecting the Mahapalika supply main with the consumer's pipe ;
- (4) 'consumer' means a person to whom water connection is given by the Mahapalika ;
- (5) 'consumer's pipe' means a pipe used in connection with supply of water from any Mahapalika Waterworks and which consists of pipes and their fittings from the stop-cock (but excluding it) up to the user's tap ;
- (6) 'distributing pipe' means any pipe used for distribution of water from the storage tank inside the consumer's premises and which is not subject to water pressure from a Mahapalika water main ;
- (7) 'fitting' includes socket, flange angle, branch, tee, bend, elbow, stop-cock, bib-cock, anti-waste-cock, reducer and any other such

accessories used for the purpose of conveying water supplied by the Mahapalika ;

- (8) 'ferrule' means a ferrule connecting the communication pipe with the Mahapalika main ;
- (9) 'Schedule' means a Schedule appended to these rules ; and
- (10) 'stop-cock' means a check valve fitted at the end of the connection pipe meant for the purpose of shutting off or regulating the supply of water from a Mahapalika main to any premises.

3. Private water-supply.—(1) Subject to the provisions of sub-rules (2) to (4) communication pipes for conveying to any premises a private supply of water from a Mahapalika Waterworks shall not be connected with such waterworks except on a written application which shall be signed by the owner or occupier of the premises. The application shall be in the form given in Schedule I and be accompanied by a fee of Rs. 5 which shall not be refundable. The Mukhya Nagar Adhikari shall get the premises inspected and, if there be no objection to giving the connection applied for, shall supply an estimate of the Mahapalika's fees and charges to the applicant within fifteen days of the receipt of the application. The applicant shall deposit the fees and charges in the Mahapalika office for which he shall be given a receipt. The Mukhya Nagar Adhikari shall thereafter sanction the connection within fifteen days of the receipt of the fees and charges :

Provided that when the application is signed by an occupier who is not the owner of the premises, it shall be entertained by the Mukhya Nagar Adhikari, only if an undertaking in writing is given by such occupier to the effect that he shall be liable to pay the entire cost for the laying, alterations or extension of the communication pipe, as the case may be, and all charges pertaining to the water connection during the period of his occupation of the property. The liability of all such charges in that event and also the liability to repair such damage as is caused due to leakage of water connections shall, notwithstanding anything to the contrary in these rules, be that of such occupier :

Provided also that in case of applications for additions, alterations, disconnections, or reconnections, a non-refundable fee of rupees two shall be charged along with the application.

(2) The Mukhya Nagar Adhikari may refuse to grant a connection in respect of any premises if he is satisfied that the arrangements for draining waste water from such premises are inadequate or that the supply of water through communication pipes is likely to cause such premises to be in an insanitary condition or to create a nuisance, unless such measures, as he may direct for disposing of the water or preventing the creation of insanitary conditions or nuisance, are carried out.

(3) The Mukhya Nagar Adhikari, if he deems it expedient, may after giving to the consumer not less than four days' notice of his intention to do so, cause the connection pipes or fittings to be replaced or moved to such other position as he thinks fit and re-laid and re-applied in such position as he may direct. All such work shall be carried out at the expenses of the Mahapalika Fund and such new connections, pipes and fittings shall thereafter vest in the Mahapalika and be maintained from the Mahapalika Fund as a Mahapalika Waterworks.

(4) The minimum water tax payable in respect of a premises which shall entitle a person to a water connection in respect of such premises shall be rupees twenty-four per annum :

Provided that where such person is willing to pay the difference by which the amount of water tax falls short of the prescribed minimum, the Mukhya Nagar Adhikari may grant a water connection for domestic purpose in respect of such premises.

4. Making, renewing and repairing connection with Mahapalika Waterworks.—(1) No connection with any Mahapalika Waterworks shall be made, renewed or repaired—

(a) except by a licensed plumber or a Mahapalika servant empowered in that behalf by the Mukhya Nagar Adhikari ; and

(b) until the certificate in sub-rule (4) has been given.

(2) The person who employs a licensed plumber to execute any of the works referred to in sub-rule (1) shall, if so required by the Mukhya Nagar Adhikari furnish to him the name of such licensed plumber. Where a new connection with a Mahapalika Waterworks is made or an existing connection is renewed or repaired, all necessary communication pipes and fittings shall be supplied by the Mahapalika or the licensed plumber and the work of laying down and applying such connection pipes and fittings shall be executed by the Mahapalika agency or the licensed plumber, as the case may be. The cost of making, renewing or repairing such connection and of all connection pipes and fittings so supplied and of all works so executed shall be paid by the consumer.

(3) In every new connection, re-connection or re-paired connection, the connection pipes will be the property of the Mahapalika and will be maintained by it. The consumer's pipe will be the property of the consumer and will be maintained by him.

(4) All consumers, pipe and its fitting shall be laid and joined under the supervision and to the satisfaction of an officer of the Mahapalika authorised by the Mukhya Nagar Adhikari for the purpose who shall, after being satisfied that there are proper and adequate arrangements for the draining of waste water, sign a certificate regarding satisfactory completion of the work.

(5) Where any consumer's or distribution pipe, cistern or such fitting is laid, applied, added to or altered or any connection is made in contravention of this rule, the Mukhya Nagar Adhikari may—

(a) cut off the water connection till the defects are got removed by the owner occupier to the satisfaction of the Nagar Abhiyanta (Jalkal) through Mahapalika agency or a licensed plumber ; or

(b) remove such consumer's or distribution pipe, cistern, fitting or connection or alterations thereto and make good such pipe, cistern, fitting or connection at the expense of the consumer.

5. Cistern and other fittings, etc. to be used for connections with waterworks.—(1) The Mukhya Nagar Adhikari, may, if he thinks necessary, require consumer to provide such premises, with fittings or suitable quality and description and placed in such position and with such easy means of access, as he deems fit within a reasonable period, after giving notice to the owner to this effect.

(2) The Mukhya Nagar Adhikari may, whenever it appears necessary or expedient by prior written notice require the owner of such premises to remove any cistern along with fittings connected therewith, from such premises within a period specified in the notice.

(3) The Mukhya Nagar Adhikari shall also, from time to time, prescribe the size, materials, quality, description and position of the pipes, cistern and fittings to be used for the purpose of any connection with or of any communication from any Mahapalika Waterworks and no connection or communication shall be made otherwise.

(4) The Mukhya Nagar Adhikari shall likewise prescribe the size, material, quality and description of the pipes, cistern and fittings to be used for the purposes of replacing any pipes, cisterns and fittings found to be so defective that they can not be effectively repaired.

6. (1) The Mukhya Nagar Adhikari may issue orders to provide for the stamping by Mahapalika agency of all pipes, taps, cocks, meters, fittings and materials to be used for the purposes of any connection or communication with any Mahapalika Waterworks.

(2) The orders under sub-rule (1) may also provide for the payment of a fee for such stamping and prohibit the use in any of the said connections or communication of any pipes, taps, cocks, fittings or materials other than those so stamped.

7. (1) The Mukhya Nagar Adhikari may, by written notice, require the owner of any premises furnished with a cistern or in respect of which the Mukhya Nagar Adhikari has required a cistern to be furnished to provide such cistern with a cover and lock of such design, material and quality as the Mukhya Nagar Adhikari may in such notice specify and may, in like manner require, any cover or lock found to be defective on an inspection under Rule 12 to be replaced.

(2) Every cistern so provided with a lock shall be kept permanently locked.

8. **Consumer's pipe to be kept in efficient condition.**—Where the consumer fails to comply with the direction of the Mukhya Nagar Adhikari issued under Rules 6 or 7, the Mukhya Nagar Adhikari may get it executed and recover the expenses thereof from the consumer as Mahapalika dues.

9. The consumer shall maintain the consumer's pipes, its fittings and cistern in a clean and satisfactory working condition so as to prevent any water from running to waste or becoming contaminated and shall also be responsible for the safety of the Mahapalika meter.

10. **Connection to be metered.**—(1) Every new water connection shall be metered by the Mahapalika and the meter shall be provided by the Mukhya Nagar Adhikari.

(2) Rent for the meter provided under sub-rule (1) shall be charged from the consumer at such rate as may from time to time be determined by the Mukhya Nagar Adhikari in consultation with the Chief Engineer, Local-Self Government Engineering Department with due regard to the prevailing market price of the meter and its accessories. The Mukhya Nagar Adhikari shall also provide a card, free of cost, for recording periodical readings of the meter. The card shall be affixed conspicuously near the meter.

In case of premises assessed to water tax and having water connection whether for domestic or non-domestic purposes no water meter rent shall be charged for any month during which the charges for water consumed do not exceed $1/12$ of the amount of the water tax assessed thereon :

Provided that in the cases of existing unmetered connections the meters shall be affixed within a maximum period of three years from the date of enforcement of these rules.

(3) The Mukhya Nagar Adhikari shall at all times keep the meters in proper order for correctly registering the supply of water, and in default of his so doing, the consumer shall not be liable to pay rent for the period during which the default continues.

(4) (a) Any consumer to whom a meter is provided under sub-rule (1), may apply, in writing, to the Mukhya Nagar Adhikari at any time to have the meter tested and every such application shall be accompanied by such fee as the Mukhya Nagar Adhikari may from time to time determine.

(b) Upon receipt of such application and fee the Mukhya Nagar Adhikari shall forthwith issue a notice to the consumer specifying the time and place for testing the meter and cause such meter to be tested at such time and place.

(c) If upon such test the meter is found to be incorrect by more than five per cent. the fee paid by the consumer shall be refunded to him, and the Mukhya Nagar Adhikari shall cause steps to be taken forthwith for the repair or replacement of the meter. The estimated overcharge shall be refunded *pro rata* for the month in respect of which the accuracy of the meter is disputed.

(5) The consumer shall be responsible for the safety and the security of the meter and, in the event of its being lost or damaged, shall be liable to pay such cost as may be determined by the Mukhya Nagar Adhikari.

(6) In order to recover the cost of lost or damaged meters the Mukhya Nagar Adhikari may realise in advance such security from the consumer as may be determined by him from time to time according to the prevailing cost of meters.

11. Consumer may affix the meter where the Mukhya Nagar Adhikari does not provide it.—In case the Mukhya Nagar Adhikari is unable to provide a water-meter to a consumer, he shall permit the consumer to affix a meter of his own of such size, material and description as may be approved by the Mukhya Nagar Adhikari after consulting the Chief Engineer, Local Self-Government Engineering Department :

Provided that such meter shall be installed only after the same has been tested and stamped by an officer authorised in this behalf by the Mukhya Nagar Adhikari on payment of a testing fee to be determined by Mukhya Nagar Adhikari :

Provided also that the Mukhya Nagar Adhikari shall have the right to get the private meters tested from time to time free of charge to verify whether they have been functioning accurately and, if any meter is found to be inaccurate the consumer shall get it replaced or repaired to the satisfaction of the Mukhya Nagar Adhikari within one week of the defect having been pointed out to him.

12. Inspection of meter, connection pipes, etc.—(1) The Mukhya Nagar Adhikari or any officer authorized by him in that behalf, may inspect any premises provided with private water connection by the Mahapalika in order—

(a) to remove, test, examine and replace any meter for measuring water ;

(b) to ascertain if there is any waste or misuse of water ;

(c) to examine any consumer's pipe, cistern, lock or fitting.

(2) The Mukhya Nagar Adhikari may, by written notice, require the consumer to remedy any defect found to exist in the meter, consumers pipe, cisterns lock and fittings.

13. Cutting of private water-supply—Power to cut off private water supply or to turn off water—(1) The Mukhya Nagar Adhikari may without prejudice to any other powers available under these rules stop, a private connection or sever a connection pipe from the consumer's pipes, in any of the following cases, namely—

(a) in default of payment of any instalment of water tax or of any sum due from the consumer for water or rent of meter or expenses of any work done by or under these rules ;

(b) if the consumer fails to comply with the direction issued under sub-rule (1) of Rule 5 ;

(c) if the consumer fails to use articles of the kind prescribed under sub-rule (3) of Rule 5 ;

(d) if the consumer fails to comply with the notice under sub-rule (2) of Rule 12 ;

(e) if after receipt of a written notice from the Mukhya Nagar Adhikari requiring him to refrain from so doing the consumer continues—

(i) to use the water or to permit the same to be used in contravention of any by law or of any condition prescribed under sub-rule (2) of Rule 17 or under any provision of the Act ;

(ii) to permit any person not residing in the premises in respect of which water tax or water charges are payable for the water supply to carry away from such premises water supplied from the Mahapalika Waterworks to a place where the charges for the water are not paid on the basis of measurement ;

(f) if the consumer of any premises wilfully or negligently damages the water-meter, its cover, lock or its stop-cock ;

(g) if the owner or occupier of the premises fails to furnish any information required by the Mukhya Nagar Adhikari under sub-rule (2) of Rule 4, i. e. the name of the licensed plumber ;

(h) if the structure in which the water connection is installed is ordered to be removed under Section 331 of the Act ;

(i) if any consumer's pipes or fittings have been laid, joined, added to, or altered, in contravention of the provisions of Rule 5 ;

(j) If wastage of water is taking place within any premises on account of damage to water pipes and fittings therein caused by accident or otherwise ;

Provided that—

(i) in any case under clause (a), the Mukhya Nagar Adhikari shall not take action unless a prior notice of demand of not

less than thirty days in respect of water tax or water charges has been affixed to a conspicuous part of the premises ;

(ii) in any case falling under clause (b) the Mukhya Nagar Adhikari shall not take action unless not less than fifteen days' prior notice under sub-rule (1) of Rule 5 or under Rule 6, as the case may be, has been affixed to a conspicuous part of the premises ;

(iii) in other cases the Mukhya Nagar Adhikari shall not take action unless written notice of not less than twenty-four hours has been given to the consumer or has been affixed to a conspicuous part of the premises.

(2) The expense of stopping or severing connections in any such case as aforesaid shall be paid by the consumer in such manner as the Mukhya Nagar Adhikari may determine.

(3) Where the defects due to which a connection is stopped or severed are removed to the satisfaction of the Mukhya Nagar Adhikari he may, on payment of requisite charges order it to be reconnected.

14. Tampering with meter prohibited.—No person shall—

- (a) alter the index to any meter or prevent any meter from duly registering the quantity of water supplied ; or
- (b) abstract or use water before it has been registered by a meter set up for the purpose of measuring the same.

15. General provisions—Prohibition of wilful or negligent acts.—No person shall wilfully or negligently—

- (a) damage or allow to be damaged any meter belonging to the Mahapalika or any of the fittings of the meter ;
- (b) break, damage or open any lock, seal, cock, valve, pipe, work, equipment, cistern or fitting appertaining to any Mahapalika Water-works ;
- (c) flush or draw off water from any such water-works and hereby causing such water to be wasted ;
- (d) do any act or allow any act to be done whereby the water in, or derived from any Mahapalika Waterworks shall be wasted ;
- (e) obstruct or divert or in any way injure or alter any water main or duct ;
- (f) except with the permission of the Mukhya Nagar Adhikari, open or break, any lock furnished under the provision of the rules ;
- (g) foul or pollute or otherwise render unfit for human consumption the water contained in any Mahapalika Waterworks ;
- (h) obstruct the flow of flushes, draw-off, divert or take water from the Mahapalika Waterworks.
- (i) without sanction, use for purposes other than domestic purposes any water supplied for domestic purposes or supplied to any standpost or pump situated in a street.

16. Where as a result of any contravention of the provisions of Rules 14 and 15 by any person, the Mahapalika suffers any loss it shall be entitled to recover compensation from such person to the extent to which it has suffered the loss.

17. **Power to require private water course, etc. to be cleaned or closed.**—(1) The Mukhya Nagar Adhikari may by notice, require the owner of a private water course, spring, tank, well or other place, the water of which is used for drinking, to keep and maintain the same in good condition and to clean the same from time to time, of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as he (Mukhya Nagar Adhikari) may think fit.

(2) Where in the opinion of the Mukhya Nagar Adhikari, the water of any water course, spring, tank, well or other such place is proved to be unfit for drinking purposes, he may, by notice, require the owner or the person having control thereof to desist from using such water or to cause or permit others to do so, and, if after the said notice such water still used by any person for drinking purposes, the Mukhya Nagar Adhikari may take such steps as may be necessary for prevention of use of such water.

18. **Supply of water for non-domestic purposes and payment for the same.**—All connections for non-domestic purposes including garden watering, building construction or trade garages shall be entirely separate from domestic connections and be separately metered.

19. The water supplied through any connection shall be paid for at a rate to be fixed by the Mahapalika in consultation with the Chief Engineer, Local Self-Government Engineering Department after taking into consideration the investment and expenditure of the Waterworks Undertaking :

Provided that in the case of charitable institutions such as schools, colleges, orphanages, asylums and hospitals, the rate of water charges may be reduced to such extent as the Mahapalika may from time to time, by resolution decide.

20. (a) The Mahapalika shall not be bound to grant a supply to any applicant for non-domestic purposes but shall be bound to supply for domestic purposes to any applicant provided his premises is within the Mahapalika area and the consumer is prepared to defray the cost of any extensions which may be necessary in the distribution main beyond a distance of 30 meters from the existing main. The distance of 30 meters will not include the area within the premises of the consumer.

(b) An applicant requiring a non-domestic water-supply shall defray the cost of the extension of any distribution main which may be necessary within the Mahapalika areas.

(c) The Mahapalika shall credit to the Water-Supply Undertaking the full value of water used by it for its own purposes such as irrigation of parks, road watering and ornamental fountains, etc. In case any charitable institution is allowed any concession in the rates by the Mahapalika, the difference between the amount actually collected from such institution at concessional rate and the cost of water consumed by it and calculated at the normal prescribed rate shall be met by the Mahapalika from its general revenues and credited to the Water-Supply Undertaking. All such supplies shall be through meters.

21. If a consumer having a domestic connection is found using water for non-domestic purpose also (along with domestic use), his connection will

be declared by a notice from the Mukhya Nagar Adhikari as a connection for combined use, and in that case, from the date of notice, the water consumed through such connection in excess of quantity authorised each month in lieu of water tax will be charged at non-domestic rate.

22. No water shall be supplied from the Mahapalika Waterworks for any purpose, domestic or non-domestic, unless it is filtered :

Provided that water supplied from tube-wells will be deemed to be filtered water.

23. The Mukhya Nagar Adhikari may by agreement supply any person with any water that he may require for any purpose for such remuneration, consistent with the rates which may be prescribed under Rule 19 and on such terms and conditions consistent with the Act and these rules, as are agreed upon between the Mukhya Nagar Adhikari and such person.

24. **Subordination to supply for domestic purposes : Of supply for other purposes.**—Notwithstanding any obligation to supply water imposed by an agreement under Rule 23, the Mukhya Nagar Adhikari may at any time cease to supply water for other than domestic purposes, if he is of the opinion that such supply would interfere with the supply of water for domestic purposes, and in such case the Mahapalika shall not be liable to any forfeiture, penalty or damages for so ceasing—

(a) unless the failure to supply such water arises from a cause other than one specified in the proviso to Section 269 of the Act, and

(b) unless the Mukhya Nagar Adhikari has undertaken to supply water for other than domestic purposes by agreement made under Rule 23 making express provision for forfeiture, penalty or damages upon failure to supply such water.

25. **Meters.**—Every meter shall be placed above ground preferably in the built-up premises and be in a position where it can be conveniently examined.

26. An account of the service and cost of repair of meters installed by the Mahapalika staff shall be kept in the form prescribed in Schedule II.

27. No meter shall be disconnected from the service pipe or otherwise interfered with, except with the permission of the Nagar Abhiyanta (Jalkal).

28. (1) The Mukhya Nagar Adhikari shall cause a meter to be removed from service and be replaced by a new meter or a meter which has been satisfactorily repaired and tested—

(a) when the meter reading book shows that the consumption has fallen off and the cause of the fall cannot be ascertained ;

(b) where the meter is damaged or is not recording or is otherwise out of order ; and

(c) after eighteen months continuous service.

(2) A meter removed under sub-rule (1) shall be examined and, where necessary, shall be repaired, cleaned and oiled.

(3) The meter shall then be tested and shall not be passed for service unless its readings are accurate within five per cent. The result of the test

shall be recorded in the register of testing in the form prescribed in Schedule III.

Note 1.—Each meter shall be tested at “full bore”, i.e. maximum rate of its discharge into the test tank at the available head of water at the testing station.

Note 2.—Each meter shall also be given a “slow test” at the allowing rate of the sizes given below :

| | | | |
|------------------------|-----|-----|--|
| Inferential meter size | ... | ... | 10 m.m. to 20 m.m. at the rate of 90 litres per hour. |
| | | | 25 m.m. to 50 m.m. at the rate of 180 litres per hour. |
| | | | 80 m.m. to 100 m.m. at the rate of 270 litres per hour. |
| | | | 125 m.m. and upwards at the rate of 450 litres per hour. |
| Positive meter size | ... | ... | 10 m.m. to 20 m.m. at the rate of 45 litres per hour. |
| | | | 25 m.m. to 50 m.m. at the rate of 90 litres per hour. |
| | | | 80 m.m. and upwards at the rate of 135 litres per hour. |

Instructions for running “slow test.”

(4) A gun-metal disc of a diameter that will nearly fit inside of the union nut on the outlet branch of the meter is required for each size and is provided with a small hole of such diameter that it will discharge the required rate of flow per hour with the pressure head available at the testing station.

Once these discs are made no further trouble is necessary in the adjustment of valves to obtain the required rate of flow, when the meter body and its working part are subject to the full pressure of the water in the supply main.

29. The register of a meter shall be *prima facie* evidence of the quantity of water consumed.

30. Where a meter is out of order for any period exceeding one week, the Mukhya Nagar Adhikari shall estimate on such available data as he considers most reliable, the amount of water consumed during such period and the amount so estimated shall be deemed to be the amount actually consumed but no rent shall be charged for a meter for the period during which it is out of order.

31. **Connection pipes.**—Connection pipes shall be not less than 0·6 metres below the surface of the ground and all pipes above ground shall, so far as is practicable be screened from exposure to the sun.

32. Whenever a communication pipe is laid across sewer or open drain or in any place where, in the opinion of the Nagar Abhiyanta (Jalkal), it is likely to be damaged, it shall be passed through a cover pipe of glazed stone-ware or cast iron of sufficient length and strength to afford due protection to it.

33. On every communication pipe a brass stop-cock having the same waterway as the pipe shall be placed at or near the entrance to the premises and, with the permission in writing of the Mukhya Nagar Adhikari, outside the premises. Such stop-cock for the purpose of indicating its situation, shall be enclosed in a masonry chamber of suitable size with a cast iron surface box having locking arrangement fixed at its top, and the key of such box shall remain under the control of the Nagar Abhiyanta (Jalkal). The stop-cock shall be capable of adjustment so that the supply to the premises may be regulated by it.

34. Standposts.—(1) The intervals at which standposts shall be erected in all chief streets or portions thereof, in which mains have been laid shall not exceed 450 metres :

Provided that standposts shall not be erected at intervals closer than 180 metres.

(2) Subject to the conditions laid down in sub-rule (1) the Mukhya Nagar Adhikari shall provide as many public standposts as circumstances allow and may provide the same with water storage tanks fed from the mains though controlled and throttled float valves. The capacity of the tanks shall not be less than 900 litres. The tank shall be properly protected from contamination and unauthorised interference. They shall be sealed and shall be of a design approved by the Chief Engineer, Local Self-Government Engineering Department.

35. Fire hydrants—The Mukhya Nagar Adhikari shall provide at suitable places fire hydrants and all the necessary equipment and assistance for supplying water in cases of fire. The necessary name plates for denoting the positions of the fire hydrant shall be fixed at suitable nearby places and the hydrant key shall be kept with the Mahapalika fire engines if the fire fighting service is maintained by the Mahapalika, otherwise with the officer in charge of the Fire Brigade of the city and all other necessary things for the aforesaid purpose shall be done, as and when considered expedient, by the Mukhya Nagar Adhikari.

36. Analysis of water.—(a) The Mukhya Nagar Adhikari shall arrange for the chemical and bacteriological analysis at an approved laboratory, of samples of water to be taken at times and from places in the water-works as specified in the following table :

| Kind of water supply | Where the samples are to be collected from | How frequently | Nature of test to be made |
|---|---|----------------|---|
| 1 | 2 | 3 | 4 |
| 1. Unfiltered water. | Balancing and collecting reservoirs if any. | Weekly | Bacteriological Colony Count and Lactose Fermentation test. |
| 2. Tubewells spring up land surface waters. | Ditto | Quarterly | Chemical. |

| 1 | 2 | 3 | 4 |
|------------------------------------|---|-----------|---|
| | Any one of the standposts and service tanks | Weekly | Bacteriological Colony Count and Lactose Fermentation test. |
| | Any one of the standposts, if softening plant is installed. | Quarterly | Chemical. |
| 3. Filtered water. | Raw water | Quarterly | Ditto. |
| | Ditto ... | Weekly | Bacteriological Colony Count. |
| | Prefilters, if any, each sand filter. | Do. | Bacteriological Colony Count and Lactose Fermentation test. |
| | Clear water reservoirs. | Do. | Ditto. |
| | Any one of the standposts. | Quarterly | Chemical. |
| | Raw water ... | Weekly | Bacteriological Colony Count only. |
| | Standpost | Do. | Bacteriological examination. |
| 4. Filtered and chlorinated water. | Prefilters, if any ... | Do. | Bacteriological Colony Count and Lactose Fermentation test. |
| | Each sand filter before chlorination. | Weekly | Bacteriological Colony Count and Lactose Fermentation test. |
| | Clear water reservoir and i. s. chlorinated water | Do. | Bacteriological Colony Count and Lactose Fermentation test. |
| | Any one of the standposts. | Quarterly | Chemical. |
| | Standposts ... | Weekly | Bacteriological examination. |
| | Raw water ... | Quarterly | Chemical examination. |

(b) The samples for routine examination shall be taken by the Nagar Swasthya Adhikari or by a Sanitary Inspector or a Laboratory Assistant under the supervision of the Nagar Swasthya Adhikari and be sent to the laboratory. If so desired by the Mukhya Nagar Adhikari, the Nagar Abhiyanta (Jalkal) or his assistants may be present at the time the samples are taken. The Nagar Abhiyanta (Jalkal), may also have any samples taken by him analysed at the laboratory.

(c) The weekly samples shall not necessarily be taken on the same day of the week.

(d) The waterworks shall be open to inspection and the taking of samples by the Nagar Swasthya Adhikari or a Sanitary Inspector or a laboratory assistant during the working hours.

37. Cisterns, trough, water closets, etc.—Every cistern shall be provided with a ball valve and a detective or warning pipe and with proper means of access and inspection and, if used for drinking water with a dust-proof cover. No cistern other than a cistern for the purpose referred to in Rule 38 shall be placed immediately over or in the same room used as a privy.

38. All water closets shall be provided with water from storage tank and not direct from the consumer's pipe nor by a tap from consumer's pipe. Every flushing cistern for the supply of water to water closets shall be fitted with an efficient waste preventing apparatus and shall be so constructed as to prevent continuous discharge or discharge of more than 14 litres of water at each flush. The storage tank shall be of sufficient size to contain water for at least 10 flushes.

39. All urinals shall be provided with water from a cistern which shall be fitted with an efficient waste preventing apparatus and shall be so constructed as to prevent a continuous discharge or a discharge of more than two litres of water at each flush. The Mahapalika may adopt any other system for supply of water to urinals with the approval of the Chief Engineer, Local Self-Government Engineering Department.

40. Every boiler for generating steam shall be supplied with water from a cistern and not by direct connection with any pump connected with the consumer's pipe.

41. All watering troughs for cattle shall be fitted with a proper ball cock under cover.

42. Agency for execution of works connected with water supply.—No person shall perform any work connected with the supply of water until he has been admitted and enrolled as a licensed plumber, and has entered into an agreement to conform to and comply with the rules of the Mahapalika.

43. A plumber's licence may be granted to a person who either himself possesses the qualification specified in Rule 44 and has furnished requisite fee and security prescribed by the Mahapalika for the purpose or who engages workman possessing the aforesaid qualification on payment of security and the annual fee prescribed by the Mahapalika. The Mukhya Nagar Adhikari may also prescribe such examination as he deems necessary for the purpose of satisfying himself as to the aforesaid qualifications.

44. Qualifications for licensed plumber.—A licensed plumber should possess the following qualifications :

(a) Theoretical—

- (1) He should have knowledge of the work of laying and fixing cast iron as well as galvanised iron pipe and know how to repair pipes in cases of leaks and bursts.
 - (2) He should know how to prepare an estimate for laying cast as well as galvanised iron pipes.
 - (3) He should possess knowledge of drawing and must be able to make neat sketches for the purpose of explaining the arrangement of house connection pipe and fitting in detail.
 - (4) He should understand fully the inside parts and principles of working of all fittings in connection with cast iron as well as galvanised iron pipes.
 - (5) He should be able to calculate the size of pipe and fittings for any house connection.
 - (6) He should be thoroughly conversant with the water-supply rules.
- (b) Practical—
- (1) He should be able to cut cast iron pipes and make lead joints a double collar in a fixed position.
 - (2) He should be able to cut and screw 50 mm. galvanised iron pipes and lay the same at any position.
 - (3) He should know the use of stocks and dies of different patterns and be able to use a foot rule and take size of pipes, collar sockets and thrads.
 - (4) He should know how to fix meters.
 - (5) He should be able to make a ferrule connection, unscrew the same and put a plug in the hole under high pressure.
 - (6) He should be able to repair standposts and other water-works fittings.

45. The agreement referred to in Rule 42 shall include the following conditions, namely—

- (a) the licensed plumber, in all matters in which he may be employed, shall afford every assistance in his power to the Mahapalika and its officers in carrying out and enforcing the Rules for the time being in force ;
- (b) in every case in which he may be employed the licensed plumber shall as far as his employment extends, comply with the rules in force at the time and such orders as may be issued by the Nagar Abhiyanta (Jalkal) and are applicable to the circumstances of the case ;
- (c) if at any time the licensed plumber or any workman employed by him violates or evades the said rules his name may, at the discretion of the Mukhya Nagar Adhikari, be removed from the list of licensed plumbers and in such an event the plumber shall at once return his licence to the Mahapalika office ;
- (d) if such plumber, acting under a road opening order, opens any road and fails to repair any damage caused to any road in a

proper and workman like manner to the satisfaction of the Nagar Abhiyanta (Samanya), the road shall be put in proper order at the cost of the said plumber, to be recovered in the manner prescribed in Chapter XXI of the Act ;

- (e) the licensed plumber shall repair any leakage in a communication pipe or cistern connected therewith within twelve hours from the time of being engaged to do so by any person ;
- (f) the licensed plumber shall start the work of laying the consumers pipe and fittings within a fortnight of the date of receipt of orders from the Mukhya Nagar Adhikari and finish the same within a fortnight thereafter. In case of extension, alteration or cleaning of pipes or other works, the work shall be finished within a fortnight of the receipt of orders from the Mukhya Nagar Adhikari ;
- (g) in case a plumber fails to execute the works mentioned in clause (f) within the period prescribed therein, the sanction for such work shall be deemed to have been cancelled and work shall not be taken up unless fresh sanction for the same has been obtained from the competent authority ;
- (h) the Mukhya Nagar Adhikari shall be competent to impose a penalty extending up to Rs. 25 if in his opinion the work executed by a plumber is unsatisfactory and in addition he may require the plumber to put it right.

46. Pressure of supply.—The supply of water in the Mahapalika main in the city shall be maintained at such pressure and during such hours at the Mukhya Nagar Adhikari may from time to time fix with the approval of the Chief Engineer, Local Self Government Engineering Department.

47. Supply of water outside the limits of the Mahapalika.—The Mahapalika may, at any time on receiving an application from an adjacent local authority or person outside the city direct that such quantity of filtered water as may be determined by the Mahapalika shall be supplied into reservoirs or pipes vested in any such local authority or person. The supply of water under these rules shall be made on such terms and conditions as the Mahapalika may, from time to time, determine :

Provided that while determining the charges for supply of such water the Mahapalika shall have regard to the expenses incurred by it in the supply :

Provided further that where a local authority concerned is a Cantonment the aforesaid terms and conditions shall be subject to the sanction of the State and the Union Government.

48. The Mahapalika shall deduct from the charges on account of water supplied through meters either for domestic or non-domestic purposes in any month one-twelfth of the water tax recoverable in respect of building or land :

Provided that no deduction shall be allowed to those premises which are exempt from the payment of the tax.

49. Supply of water from standposts for non-domestic purposes.—Where a person requires water for constructing a building or for any other similar purpose to be supplied to him from a nearby, standpost he shall

apply to the Mukhya Nagar Adhikari for the purpose who may give the necessary permission after realising the charges according to the rates fixed :

SCHEDULE I

[Rule 3 (1)]

Application for the laying, alteration or extension of a communication pipe :

Presented by.....

Name.....

Address.....

I/We the undersigned, hereby make application for the permission to lay a communication pipe or to alter or/and extend the existing communication pipe at the premises and in the manner described below. I/We enclose a receipt regarding deposit of a fee of Rs. 5 prescribed in Rule 3 (1) of the Uttar Pradesh Nagar Mahapalika Water-Supply Rules.

*I/We propose to employ for the execution of the work..... who is a licensed plumber.

*I/We request the Mahapalika to furnish me/us with an estimate of the cost of executing the work.

Name.....

Address

Description of permises

House or premises No situated in road Mohalla

**Water-tax, if any, assessed on the premises Rs.....Description of the proposed work including specification of fittings and materials—

(a) It is proposed to lay or/alter or/and extend the communication pipe (so as to.....) and in doing so to make use of the fittings of the following specifications :

SCHEDULE II

Register of Service and repairs of water meters

| Size | Meter No. | | Manufactured by..... | | | |
|-------------------|-----------|------------|----------------------|------------------|-------------------|-----------------|
| Period of service | | | | Meter reading | | |
| Put in service | Taken off | In service | | At date of issue | At date of return | Litres recorded |
| | | Month | Days | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

*Delete the words not required.

**Delete unless new connection is required.

| Litres in meter reading | Reason for return to S. W. W. | Nature of repairs to meters | Cost of repairs | | |
|----------------------------|-------------------------------------|-----------------------------------|-----------------|----------|-------|
| | | | Labour | Material | Total |
| 8 | 9 | 10 | 11 | 12 | 13 |
| | | | Rs. | Rs. | Rs. |

SCHEDULE III

(Rule 28)

Register for testing of water meters

-----Waterworks----- Manufactured by-----
 Size Meter

Date of test

Full bore test

Meter readings

At start At finish Litres

1

2

3

4

Slow test

| Percentage or | At start | At finish | Litres | Percentage | Remarks |
|------------------|----------|-----------|--------|------------|---------|
| 5 | 6 | 7 | 8 | 9 | 10 |

U. P. NAGAR MAHAPALIKAS (OATH) (AMENDMENT) RULES, 1970

*English translation of Nagarpalika (Kha) Vibhag. Noti. No. 1704-A/XXI
—KH-28—KAVAl-68, dated June 26, 1970, published in U. P.
Gazette, Extra., dated 26th June, 1970, pp. 3 4.*

In continuation of Government Notification No 1557-A/XI-Kha—28-Kaval-68, dated June 15, 1970, and in exercise of powers under Section 87 and sub-section (1) of Section 540 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959) read with section 21 of the U. P. General Clauses Act, 1904 (U. P. Act I of 1904), the Governor is pleased to make the following rules, after previous publication in the aforesaid notification, as required by sub-section (2) of Section 540 of the said Adhiniyam.

1. Short title and commencement.—(1) These rules may be called the Uttar Pradesh Nagar Mahapalikas (Oath) (Amendment) Rules, 1970.

(2) They shall come into force at once.

2. Amendment of Rule 4.—For Rules 4 and 5 of the Uttar Pradesh Nagar Mahapalikas (Oath) Rules, 1968, the following Rules 4 to 7 shall be substituted :

4. Oath how and where to be made in certain cases.—(1) Every person who is elected as Nagar Pramukh otherwise than at the time of the constitution or reconstitution of the Mahapalika shall be administered the said oath or affirmation by the Commissioner of the Division and, in the absence of the Commissioner, by the District Magistrate, at a meeting of the Nagar Pramukh, Sabhasads and Vishisht Sadasyas, to be convened by the Mukhya Nagar Adhikari as soon as may be after the said election.

(2) Where any person other than the Nagar Pramukh owing to his absence or to any other cause is unable to make the oath or affirmation at the meeting referred to in sub-section (1-A) of Section 85, or where such person is elected or co-opted otherwise than at the time of the constitution or reconstitution of the Mahapalika, he may, within the period allowed by sub-section (2) of that section, be administered the oath or affirmation either—

(a) at one of the first three meetings of the Mahapalika held after the date on which his term of office commences, by the person presiding at such meeting ; or

(b) after previous appointment,—either by the Nagar Pramukh or by the District Magistrate.

5. Manner of administration of oath.—A person making the oath or affirmation may do so by reading out the oath or affirmation by himself, and it shall not be necessary for the person administering oath or affirmation to read it out to him unless in the special circumstances of a case the person administering oath or affirmation considers it expedient to do so. After making the oath or affirmation as aforesaid, such person shall sign the form, and the person administering the oath or affirmation, as the case may be, shall countersign it and forward it forthwith to the Mukhya Nagar Adhikari for record.

6. *Duty of Mukhya Nagar Adhikari to report default.*—It shall be the duty of the Mukhya Nagar Adhikari to report, as soon as may be, to the State Government and the District Magistrate and, except in the case of Nagar Pramukh himself, also to the Nagar Pramukh, the name of any Sabhasad, Nagar Pramukh or Vishisht Sadasya or of any co-opted Member of the Development Committee who has ceased to hold office under sub-section (2) of Section 85 and the date from which his seat has become vacant.

7. (1) The Uttar Pradesh Nagar Mahapalika Sabhasadon Tatha Vishisht Sadasyon Dwara Shapath (Grahan) Niyamawali, 1966, is hereby rescinded, but such rescission shall not be construed to have the effect of reviving the rules regarding matters relating to the taking of oath under Section 85 promulgated with notification No. 485-Ma (Ni-6)/XI-C-71-Corp-59, dated January, 15, 1960, which had been superseded by the said Niyamawali.

(2) In sub-rule (2) of Rule 4 of the Nagar Mahapalika (Holding of Meetings and Conduct of Business) Rules, 1960, the commas and words 'at a meeting of the Mahapalika' shall be omitted.

**U. P. NAGAR MAHAPALIKA SERVICES (DESIGNATIONS,
SCALES OF PAY, QUALIFICATIONS, CONVEYANCE
ALLOWANCES AND METHOD OF RECRUITMET)
(AMENDMENT) ORDER, 1970**

*English translation of Nagarpalika Vibhag, Noti. No. 239-A/XI-B-5-
Corp-67, dated July 31, 1970, published in U. P. Gazette, Part I-ka,
dated 22nd August, 1970, pp. 2679-2680.*

In exercise of the powers under Sections 106 and 109 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. I of 1904), the Governor is pleased to make the following order, with a view to amend the Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963 :

1. **Short title and commencement.**—(1) This Order may be called the Uttar Pradesh Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) (Amendment) Order, 1970.

(2) It shall be deemed to have come into force with effect from October 1, 1966.

2. **Amendment to Para 10 of the Order.**—In the Uttar Pradesh Nagar Mahapalika Services (Designation, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963, for Para 10 the following rule shall be substituted :

Para 10 as hereby substituted

10. (1) Conveyance allowance shall be admissible to the incumbents of

the posts specified in the Schedule for such conveyances and at such rates as are mentioned against them ;

Provided that "Tonga" and any other "conveyance" for which allowance was admissible on September 30, 1966, shall be deemed to have ceased to be regarded as authorized means of conveyance with effect from October 1, 1966. However, if any employee was getting any of these allowances on September 30, 1966, he would be allowed to draw the same at the rates admissible from time to time till the date he continues to maintain the conveyance in question during his incumbency of the post. No employee, who was not maintaining such means of conveyance on September 30, 1966, or any person who entered service on or after October 1, 1966 will be entitled to draw any allowance for the same.

(2) Conveyance allowance shall be payable only when the conveyance is actually maintained and is in working order and a certificate to that effect, countersigned by the Head of the Department concerned, is furnished every month by the servant concerned :

Provided that the appointing authority may, in special cases sanction compensatory conveyance allowance for a short period, not exceeding six months for using hired conveyance where an employee does not maintain a conveyance because of his being appointed on probation or for a short period or for other similar reasons considered sufficient by the appointing authority, or where an employee maintains a conveyance but the same is not actually used for its being under repairs or for some other reasons considered sufficient by the appointing authority. The rate of such allowance shall in every case, except bicycle, be 5 less than the amount of allowance fixed for type of conveyance :

Provided also that if in any exceptional case it appears to the State Government that payment of a conveyance allowance to the incumbent of any other post is justified having regard to the nature of duties to be performed by him and the amount of touring involved therein, the State Government may sanction a suitable allowance to the said servant and the payment of such allowance shall be subject to the same terms and conditions as mentioned in the paragraphs above.

N. B.—The Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963, published with Notification No. 16-Ma/XI C—28 Corp-62, dated March 1, 1963 was amended by the following notifications :

- (1) Noti. No. 66 ma (San 1)/XI C—2 Corp-62, dated May 15, 1963.
- (2) Noti. No. 82-ma/ (Jan 2)/XI C—28 Corp-62, dated August 8, 1963.
- (3) Noti. No. 206-ma /XI C—28 Corp-62, dated March 31, 1964.
- (4) Noti No. 57-ma/XI/C—26 Corp-65, dated December 18, 1965.
- (5) Noti. No. 2264-B/XI C—28 Corp-62, dated August 10, 1966.
- (6) Noti. No. 3 62-B/XI C—28 Corp-62, dated November 15, 1966.
- (7) Noti. No. 590-B/XI C—5 Corp-67, dated May 18, 1967.
- (8) Noti. No. 777-ma/XI C—28 Corp-62, dated February 21, 1968.

**THE UTTAR PRADESH NAGAR MAHAPALIKA SERVICES
DESIGNATIONS, SCALES OF PAY, QUALIFICATIONS,
CONVEYANCE ALLOWANCES AND METHOD
OF RECRUITMENT) (AMENDMENT)
ORDER, 1970**

English translation of Nagarpalika Vibhag, Noti. No. 398 A/XI-Kha-50-Kaval-68, dated July 13, 1970, published in U. P. Gazette, Part 1, dated 25th July, 1970, p. 3268.

In exercise of the powers under Sections 106 and 109 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1-59 (U. P. Act No. II of 1959), read with Section 21 of the U. P. General Clauses Act, 1954 (U. P. Act No. I of 1904), the Governor is pleased to make the following Order, with a view to amend the Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963 :

1. Short title and commencement.—(1) This Order may be called the Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) (Amendment) Order, 1970.

(2) It shall come into force with effect from the date of its publication in the *Gazette*.

2. Amendment of the Schedule.—In the Schedule to the U. P. Nagar Mahapalika Service (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963, for the existing entry under the head "MINISTERIAL SERVICE" against Serial No. 3. the entry as set out below shall be substituted :

Qualifications as hereby substituted

High School or an equivalent examination recognised by the Uttar Pradesh Government with a diploma in Steno-typing in Hindi. The speed in Hindi short-hand should not be less than 50 words per minute and the speed in Hindi type-writing should not be less than 25 words per minute. Preference will, however, be given to the candidates possessing diploma in English Steno-typing also.

Note.—The Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963, published with Notification No. 16-Ma/XI-C—28-Corp-62, dated March 1, 1963, was amended by the following notifications :

- (1) Notification No. 66-Ma (San-1)/XI-C—28 Corp/62, dated May 15, 1963.
- (2) Notification No. 82-Ma (San-2) XI-C—28-Corp/62, dated August 8, 1963.
- (3) Notification No. 206-Ma/XI C—28-Corp/62, dated March 31, 1964.
- (4) Notification No. 57-Ma/XI-C—28 Corp/65, dated December 18, 1965.
- (5) Notification No. 2264-B/XI-C—28-Corp/62, dated August 10, 1966.
- (6) Notification No. 3962-B/XI-C—27 Corp/66, dated November 15, 1966.
- (7) Notification No. 590-B/XI-C—5-Corp/67, dated May 18, 1967.
- (8) Notification No. 777 Ma/XI C—28 Corp/62, dated February 21, 1968.

**THE UTTAR PRADESH NAGAR MAHAPALIKA (NAGAR
PRAMUKHON AUR UP NAGAR PRAMUKHON
KE NIRVACHAN KA SANCHALAN)
(SANSHODHAN) AGYA, 1970**

English translation of Nirvachan Vibhag, Noti. No. 134/XVII-A-17-M-67, dated June 17, 1970, published in U. P. Gazette, Extra, dated 17th June, 1970, p. 2.

In exercise of the powers under Section 46 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), as amended from time to time the Governor is pleased to make the following Order :

(See Section 46 of U. P. Nagar Mahapalika Adhiniyam, 1959).

1. Short title and commencement.—(1) This Order may be called the Uttar Pradesh Nagar Mahapalika (Nagar Pramukhon Aur Up Nagar Pramukhon Ke Nirvachan Ka Sanchalan) (Sanshodhan) Agya, 1970.

(2) It shall come into force at once.

2. Amendment of the U. P. Nagar Mahapalika (Nagar Pramukhon Aur Up Nagar Pramukhon Ke Nirvachan Ka Sanchalan) Agya, 1959.—In the U. P. Nagar Mahapalika (Nagar Pramukhon Aur Up Nagar Pramukhon Ke Nirvachan Ka Sanchalan) Agya, 1959, in sub-para (2) of Para 13, for the words, "The alphabetical order shall be determined with reference to the names of candidates as entered in the electoral rolls", the following words shall be substituted, namely :

"The alphabetical order shall be determined with reference to the surnames of candidates having surnames and the names proper of other candidates as mentioned in the list of valid nomination."

**U. P. NAGAR MAHAPALIKA SEVA (SANSHODHAN)
NIYAMAWALI, 1970**

English translation of Nagarpalika Vibhag, Noti. No. 1818A (Ni-18)(San V) XI —Kha-1-K-(1) 66, dated March 5, 1970, published in U. P. Gazette, Part I-Ka, dated 21st March 1970, p. 1013.

In exercise of the powers under Sections 106, 109, 110, 113 and sub-section (1) of Section 540 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. I of 1904), the Governor is pleased to make the following Rules for the purpose of amending the Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962, after their previous publication under Government Notification No. 1216-A/XI-Kha (Ni-18) 1-K (1)-66, dated June 30, 1969, as required by sub-section (2) of Section 540 of the said Adhiniyam :

1. Short title and commencement.—(1) These rules may be called the Uttar Pradesh Nagar Mahapalika Seva (Sanshodhan) Niyamawali, 1970.

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

2. Amendment of Rule 75-A.—In the Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962, after clause (c) of sub-rule (1) of Rule 75-A, the following new clause (d) shall be added :

“(d) for the purchase of a motor car or for repayment of a loan already taken for the purpose.”

Note.—The Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962, published with Notification No. 173-Ma (Ni—18)/XI-C-I Corp-IV-57, dated December 14, 1962, was amended by the following rules :

(1) First amendment published with Notification No. 135-Ma-(Ni—18) (San-1)/XI-C-1 Corp (iv)-57, dated July 2, 1964.

(2) Second amendment published with Notification No. 234-Ma(Ni—18) (San—2)/XI-C-1 Corp (iv)-57, dated June 11, 1965.

(3) Third amendment published with Notification No. 3521-B(Ni—98)/(San-3)/XI-C-48 Corp-64, dated February 27, 1967.

(4) Fourth Amendment published with Notification No. 1063-B(Ni—18) (San—4)/XI-C-I-Corp (iv)-57, dated August 4, 1967.

U. P. NAGAR MAHAPALIKAS (ALPAKALIK VYAVASTHA) ADHINIYAM, 1966¹

(U. P. Act No. IV of 1966)

[As passed by the Uttar Pradesh Legislature]

An Act to provide for certain temporary arrangements for the administration of the Nagar Mahapalikas of the State on and from the first day of February, 1966 and for matters connected therewith

It is hereby enacted in the Seventeenth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966.

2. Temporary provisions regarding administration of Mahapalikas.—Upon the expiry of the extended term of the Mahapalikas of Kanpur, Agra, Varanasi, Allahabad and Lucknow on the thirty-first day of January, 1966, the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the said Adhiniyam), shall on and from the first day of February, 1966, for a period of two years or until the reconstitution of the said Mahapalikas under Section 9 of the said Adhiniyam, whichever be earlier, have effect in relation to each of the said Mahapalikas subject to the following provisions, namely—

(a) notwithstanding anything in the said Adhiniyam, the Nagar Pramukh, the Up Nagar Pramukh, the Sabhasads, the Vishishta

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1. In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Nagar Mahapalika (Alpakalik Vyavastha) Adhiniyam, 1966 (Uttar Pradesh Adhiniyam Sankhya IV of 1966) as passed by the Uttar Pradesh Legislature and assented to by the Governor on February 28, 1966. Pub. in U. P. Gazette, Extra., dated March 1, 1966.

Sadasyas and the Mukhya Nagar Adhikari of the Mahapalika shall vacate their respective offices ;

- (b) all powers, functions and duties of the Mahapalika, its Nagar Pramukh, Up Nagar Pramukh, Executive Committee, Development Committee and other Committees and of the Mukhya Nagar Adhikari, shall be vested in and be exercised, performed and discharge by an Administrator to be appointed by the State Government, and such Administrator shall be deemed in law to be the Mahapalika, Nagar Pramukh, Up Nagar Pramukh, Executive Committee, Development Committee or other Committee, or the Mukhya Nagar Adhikari, as the occasion may require ;
- (c) subject to any general or special orders of the State Government, the Administrator may in respect of all or any of the powers conferred on him by the last preceding clause,—
 - (i) delegate, subject to such conditions as he may think fit to impose, the powers so conferred, to any person or authority to be specified by him in that behalf ; or
 - (ii) consult such body or committee constituted in such manner as may be specified by him in that behalf ;
- (d) such salary and allowances of the Administrator as may be fixed by general or special orders of the State Government in that behalf shall be paid out of the Mahapalika Fund ;
- (e) the State Government may from time to time by notification in the *Gazette* make such incidental and consequential provisions, including provisions for adapting, altering, modifying or suspending in whole or in part the operation of any provisions of the said Adhiniyam, as may appear to it to be necessary or desirable for any of the foregoing and connected purposes.

3. Repeal and Saving.—(1) The Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhyadesh, 1966 (U. P. Ordinance No. II of 1966), is hereby *repealed*.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the twenty-fifth day of January, 1966.

**U. P. NAGAR MAHAPALIKA SERVICES (DESIGNATIONS,
SCALES OF PAY, QUALIFICATIONS, CONVEYANCE
ALLOWANCES AND METHOD OF RECRUIT-
MENT) (AMENDMENT) ORDER, 1965.**

English translation of Nagarpalika Vibhag Notification No. 57-Ma/XI-C-27 - Corp/65, dated 18th December, 1965, published in U.P. Gazette, Part 1-(ka), dated January 1, 1966, p. 13.

In exercise of the powers under Sections 106 and 109 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U. P. Act No. 1, 1904), the Governor of Uttar Pradesh is pleased to make the following Order for the purpose of amending the Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance

Allowances and Method of Recruitment) Order, 1963, published under Notification No. 16-Ma/X-C-28—Corp/62, dated March 1, 1963 in the *Gazette*, Extraordinary of the same date :

1. Short title and commencement.—(a) This Order may be called the Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) (Amendment) Order, 1965.

(b) It shall come into force with effect from the date of its publication in the *Gazette*.

2. In the Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963 for the sub-paragraph mentioned in column 1 the sub-paragraph as mentioned in column 2 shall be *substituted* :

Column 1

Original sub-paragraph (1) of paragraph 5

5. (1) No posts other than the posts mentioned in the Schedule shall be created by a Mahapalika under clause (vi) of sub-section (1) of Section 106 nor shall any existing post be combined with another post except with the prior sanction of the Government and on such terms and conditions as Government may specify in that behalf.

Column 2

Amended sub-paragraph (1) of paragraph 5

5. (1) (a) No posts other than the posts mentioned in the Schedule shall be created by a Mahapalika under clause (vi) of sub-section (1) of Section 106, except with the prior sanction of the State Government and on such terms and conditions as the State Government may specify in that behalf.

(b) Without prejudice to anything contained in sub-para (2) the number of such posts as the Mahapalika creates under clause (vi) of sub-section (1) of Section 106 shall not, except with the prior sanction of the State Government, exceed their number as existed on January 31, 1960.

(c) The Mahapalika shall not combine any existing post with another post except with the prior sanction of the State Government.

(d) Where a Mahapalika has already created posts in excess of the permanent posts which existed on January 31, 1960 the posts which are in excess shall not be filled up, or if substantive appointments thereto have already been made, they shall not be filled up on the occurrence of future vacancies, without prior approval of Government.

**U. P. NAGAR MAHAPALIKAS (ALPAKALIK VYAVASTHA)
ADHINIYAM, 1966¹**

(U. P. Act No. IV of 1966)

[As passed by the Uttar Pradesh Legislature]

An Act to provide for certain temporary arrangements for the administration of the Nagar Mahapalikas of the State on and from the first day of February, 1966 and for matters connected therewith

It is hereby enacted in the Seventeenth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966.

2. Temporary provisions regarding administration of Mahapalikas.—Upon the expiry of the extended term of the Mahapalikas of Kanpur, Agra, Varanasi, Allahabad and Lucknow on the thirty-first day of January, 1966, the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the said Adhiniyam), shall on and from the first day of February, 1966, for a period of [* *]² or until the reconstitution of the said Mahapalikas under Section 9 of the said Adhiniyam, whichever be earlier, have effect in relation to each of the said Mahapalikas subject to the following provisions, namely—

- (a) notwithstanding anything in the said Adhiniyam, the Nagar Pramukh, the Up Nagar Pramukh, the Sabhasads, the Vishishta Sadasyas and the Mukhya Nagar Adhikari of the Mahapalika shall vacate their respective offices ;
- (b) all powers, functions and duties of the Mahapalika, its Nagar Pramukh, Up Nagar Pramukh, Executive Committee, Development Committee and other Committees and of the Mukhya Nagar Adhikari, shall be vested in and be exercised, performed and discharge by an Administrator to be appointed by the State Government, and such Administrator shall be deemed in law to be the Mahapalika, Nagar Pramukh, Up Nagar Pramukh, Executive Committee, Development Committee or other Committee, or the Mukhya Nagar Adhikari, as the occasion may require ;
- (c) subject to any general or special orders of the State Government, the Administrator may in respect of all or any of the powers conferred on him by the last preceding clause,—

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- 1. As passed by the Uttar Pradesh Legislature and assented to by the Governor on February 28, 1966 and published in U. P. *Gazette*, Extra., dated March 1, 1966.
 - 2. For the word "two years" the words "two years and five months" were substituted by U. P. Act No. XII of 1968 and after that the words "three years and two months" were substituted by U. P. Act No. XXI of 1968. Again the words "three years and eleven months" have been substituted for the words "three years and two months" by U. P. Act No. V of 1969. The words "four years and eleven months" have been substituted by U. P. Act No. VIII of 1970.

- (i) delegate, subject to such conditions as he may think fit to impose, the powers so conferred, to any person or authority to be specified by him in that behalf ; or
- (ii) consult such body or committee constituted in such manner as may be specified by him in that behalf ;
- (d) such salary and allowances of the Administrator as may be fixed by general or special orders of the State Government in that behalf shall be paid out of the Mahapalika Fund ;
- (e) the State Government may from time to time by notification in the *Gazette* make such incidental and consequential provisions, including provisions for adapting, altering, modifying or suspending in whole or in part the operation of any provisions of the said Adhiniyam, as may appear to it to be necessary or desirable for any of the foregoing and connected purposes.

3. Repeal and Saving.—(1) The Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhyadesh, 1966 (U. P. Ordinance No. II of 1966), is hereby *repealed*.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the twenty-fifth day of January, 1966.

U. P. NAGAR MAHAPALIKA ALPAKALIKS (VYAVASTHA (SANSHODHAN) ACT, 1968

(Act No. XII of 1968)

(6th April, 1968)

*[Enacted by the President in the Nineteenth Year of the Republic of India]
An Act to amend the Uttar Pradesh Nagar Mahapalikas (Alpakalik
Vyavastha) Adhiniyam, 1966*

In exercise of the powers conferred by Section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1968, (7 of 1968) the President is pleased to enact as follows :—

Reasons for the enactment.—(1) The last general elections to the Nagar Mahapalika in the State of Uttar Pradesh were held in 1959-60 and the Mahapalikas were due to complete six years of their term including extended periods on January 31, 1966. It was not considered desirable to extend their term further without their seeking fresh mandate from the electorate. At the same time arrangements for holding fresh general elections to these bodies could not be made due to the National emergency. And accordingly by the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966, the powers, functions and duties of the Mahapalikas, its Nagar Pramukhs, Uttar Pradesh Nagar Pramukhs, Executive Committees and other committees and of the Mukhya Nagar Adhikari were vested with effect from 1st February, 1966 for a period of two years in the Administrators appointed by the State Government. It was expected that the elections under the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, would be held before 1st February, 1968, but for certain unavoidable reasons these elections could not be held by this date and it became necessary to extend the term of the Administrators. With this end in view the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) (Sanshodhan) Adhyadesh, 1968, was promulgated by

the Governor on January 27, 1968, whereby the term of the Administrators was extended up-to the end of June, 1968.

2. The proposed measure seeks to replace the aforesaid Ordinance.

3. The Committee constituted under the proviso to sub-section (2) of Section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1968 has approved the enactment of this measure as a President's Act.

1. **Short title.**—This Act may be called the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) (Sanshodhan) Act, 1968.

2 **Amendment of Section 2.**—In the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966, (U. P. Act IV of 1966) in the opening paragraph of Section 2, for the words "two years", the words "two years and five months" shall be substituted.

3. **Repeal.**—The Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) (Sanshodhan) Adhyadesh, 1968, (U. P. Ordinance II of 1968) is hereby repealed.

U. P. NAGAR MAHAPALIKAS (ALPAKALIK VYAVASTHA) (SECOND AMENDMENT) ACT, 1968

(President's Act No. XXI of 1968)

*[Enacted by the President in the Nineteenth year of the Republic of India]
An Act further to amend the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966*

In exercise of the powers conferred by Section 3 of the Uttar Pradesh Legislature (Delegation of Powers) Act, 1968 (7 of 1968), the President is pleased to enact as follows :

STATEMENT OF OBJECT AND REASONS—Reasons for the enactment of this Act :

By the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966, the powers, functions and duties of the Mahapalikas in Uttar Pradesh were vested with effect from 1st February 1966, for a period of two years in Administrators appointed by the State Government. This period was extended by five months, i. e. up to the end of June, 1968, by an Ordinance promulgated by the Governor, which was replaced by the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) (Sanshodhan) Act, 1968, enacted by the President.

2. While the elections to four out of the five Nagar Mahapalikas in the State are about to be completed, it has not been possible due to law and order situation in Allahabad to hold the elections to the Nagar Mahapalika, Allahabad, and as such it has become necessary to further amend the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966, with a view to extending the term of the Administrators up to the end of March, 1969, or the reconstitution of the Mahapalikas whichever be earlier.

3. The Committee constituted under the proviso to sub-section (2) of Section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1968 (7 of 1968), has approved the enactment of this measure as a President's Act.

1. This Act was enacted by the President on June 28, 1968 and was published in U. P. Gazette, Extraordinary on 28th June, 1968.

1. **Short title.**—This Act may be called the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) (Second Amendment) Act, 1968.

Comment

This was enacted by the President on June 28, 1968 and it was published in U. P. Government *Gazette*, Extra, of the same date.

2. **Amendment of Section 2.**—In the Uttar Pradesh Nagar Mahapalikas (Alpakalik Vyavastha) Adhiniyam, 1966 (U. P. Act No. IV of 1966), in the opening paragraph of Section 2, for the words “two years and five months”, the words “three years and two months” shall be substituted.

U. P. NAGAR MAHAPALIKA (SANSHODHAN) ADHINIYAM, 1970¹

(U. P. Act No. 8 of 1970)

(As Passed by the Uttar Pradesh Legislature)

An

Act

further to amend the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 and the Uttar Pradesh Mahapalika (Alpakalik Vyavastha) Adhiniyam, 1966

It is hereby enacted in the Twenty-first Year of the Republic of India as follows :—

1. **Short title.** This Act may be called the Uttar Pradesh Nagar Mahapalika (Sanshodhan) Adhiniyam, 1970.

2. **Amendment of Section 208 of U. P. Act No. II of 1959.**—In section 208 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, hereinafter referred to as the principal Act, for the words “When the assessment list has been prepared” the words “When assessment list for the whole of the City or of any ward thereof containing the particulars mentioned in clauses (a) to (e) of section 207 has been prepared” shall be substituted, and for the words “the list”, wherever occurring, the words “that list” shall be substituted.

3. **Amendment of Section 209.**—In section 209 of the principal Act, in sub-section (1), for the words “entered therein” the words and figures “entered in the list mentioned in section 208” shall be substituted.

4. **Amendment of section 210.**—For section 210 of the principal Act the following section shall be substituted, namely :—

“210. (1) After the disposal of all objections pertaining to the list for the City or of any ward thereof, as the case may be the Chairman of the Committee or of the Sub-Committee concerned, if any, shall authenticate by his signature that list as well as all amendments made therein under sub-section (3) of section 209.

(2) Every list so authenticated shall be deposited in the office of the Mahapalika.

(3) As soon as the list for the entire City is so deposited it shall be declared by public notice to be open for inspection.”

1. Published in U. P. Gazette, Extraordinary, dated April 2, 1970.

5. Amendment of section 211.—In section 211 of the principal Act, in sub-section (2), for the words “until the first day of April next following the completion of the new list” the words “until the first day of April or the first day of October next following the completion of the new list, whichever is earlier” shall be substituted.

6. Amendment of U. P. Act No. IV of 1966.—In the Uttar Pradesh Nagar Mahapalika (Alpakalik Vavastha) Adhiniyam, 1965, in the opening paragraph of section 2 for the words “three years and eleven months” the words “four years and eleven months” shall be substituted.

7. Repeal of U. P. Ordinance 10 of 1969.—The Uttar Pradesh Nagar Mahapalika (Sanshodhan) Adhyadesh, 1969 is hereby repealed.

U. P. NAGAR MAHAPALIKA SURCHARGE RULES, 1966

English Translation of Nagarmahapalika Vibhag Notification No. 3-Ma-(Ni-14)/XI-C—57-Corp.-59, dated 20th April, 1966, published in U. P. Gazette, Part 1-(ka), dated April 23, 1966, p. 1196.

In exercise of the powers under sub-section (2) of Section 12-A and clause (e) of Section 153, read with sub-section (1) of Section 540 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), the Governor of Uttar Pradesh is pleased to make the following U. P. Nagar Mahapalika Surcharge Rules, 1966, after their previous publication under Notification No. 1-Ma (Ni-14)/XI-C—57-Corp.-59, dated February 9, 1966, as required by sub-section (2) of Section 540 of the said Adhiniyam ;

1. Short title and commencement.—(i) These Rules may be called “The U. P. Nagar Mahapalika Surcharge Rules, 1966”.

(ii) They shall come into force at once.

2. Definitions.—In these rules unless there is anything repugnant in the subject or context,—

(a) ‘Act’ means the U. P. Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959) ;

(b) ‘Mahapalika’ includes the Executive Committee or the Development Committee or any Committee appointed under clause (e) of Section 5 or Special Committee or a Joint Committee or a Sub-Committee appointed under the provisions of the Act ;

(c) ‘Government’ means the Government of Uttar Pradesh ;

(d) ‘Mahapalika Fund’ includes development fund and also such other funds, as may be constituted under sub-section (3) of Section 139 of the Act.

3. Power of the Mukhya Nagar Lekha Parikshak, Auditors and the State Government.—(1) Where in the opinion of Mukhya Nagar Lekha Parikshak there has been a loss, waste or misapplication of any money or other property belonging to the Mahapalika as a direct consequence of neglect or misconduct of the Up Nagar Pramuk, Vishishta Sadasya or Sabhasad or any officer or servant of the Mahapalika, he shall take action as below :

(a) In case the loss, waste or misapplication is due to neglect or misconduct of the Up Nagar Pramukh, Vishishta Sadasya, Sabhasad or Mukhya Nagar Adhikari, or in case the loss, waste or misapplication is due to neglect or misconduct of the officers or servants of the Mahapalika other than the Mukhya Nagar Adhi-

kari and involves an amount exceeding Rs. 5,000, the Mukhya Nagar Lekha Parikshak shall report the matter to the State Government who may, if necessary, call upon the person or persons reported against to explain in writing why he should not be surcharged with the amount misapplied or which represents the loss or waste caused to the Mahapalika fund or to its property and such explanation shall subject to the provisions of sub-rule (5), be furnished within a period not exceeding two months from the date of receipt of the show cause notice unless otherwise specified in the notice.

- (b) In any other case of loss, waste or misapplication due to neglect or misconduct of the officers and servants of the Mahapalika other than the Mukhya Nagar Adhikari, the Mukhya Nagar Lekha Parikshak shall report the matter to the Mukhya Nagar Adhikari who may call upon such officer or servant to explain in writing why he should not be surcharged with the amount misapplied or which represents the loss or waste caused to the Mahapalika fund or to its property and such explanation shall, subject to the provisions of sub-rule (5), be furnished within a period not exceed two months from the date such requisition is communicated to the person concerned.

(2) Where a loss, waste or misapplication of money or other property of the Mahapalika comes to notice as a result of the special examination and audit or the Mahapalika accounts directed by the State Government under Section 143 of the Act, the auditors concerned shall report the case to Government who may in case such loss, waste or misapplication is due to the neglect or misconduct of Up Nagar Pramukh, Vishishta Sadasya, Sabhasad, Mukhya Nagar Adhikari or Mukhya Nagar Lekha Parikshak call for his explanation as laid down in clause (a) of sub-rule (1). In other cases the State Government may direct the Mukhya Nagar Adhikari to take action as indicated in clause (b) of the said sub-rule.

(3) If the Mukhya Nagar Lekha Parikshak or the auditors referred to in sub-rule (2), require any information for a preliminary enquiry the same shall be furnished to them by the Mukhya Nagar Adhikari within a reasonable time not exceeding one month.

(4) Without prejudice to the generality of the provisions contained in sub-rules (1) and (2) the explanation may be called in the following cases :

- (a) where expenditure has been incurred in contravention of the provisions of the Act or the rules, by-laws or regulations made thereunder ;
- (b) where loss has been caused to the Mahapalika by acceptance of a higher tender without sufficient reasons recorded therefor ;
- (c) where any sum due to the Mahapalika has been remitted in contravention of the provisions of the Act or the rules, by-laws or regulations made thereunder ;
- (d) where loss has been caused to the Mahapalika by neglect to realize its dues ;
- (e) where loss has been caused to the Mahapalika fund or other property of the Mahapalika owing to lack of reasonable care in the custody or disbursement of such money or in the custody or misuse of property ; and

(f) where annual value has been reduced for such considerations which manifestly appear to be inadequate or *mala fide* :

Provided that no explanation shall be called from the Up Nagar Pramukh, any Vishishta Sadasya or Sabhasad who is recorded in minutes as having been absent from the meeting of the Mahapalika at which the expenditure objected to by the Mukhya Nagar Lekha Pariksak or the auditor was sanctioned or as having voted against such expenditure.

Explanation.—Making of an appointment in contravention of the provisions of the Act or any rules made thereunder may amount to misconduct or neglect and payment of salary or other dues to a person so appointed may be deemed to be a loss, waste or misapplication of money belonging to the Mahapalika for the purposes of Rules 3 and 4.

(5) On the written requisition of the person concerned from whom an explanation has been called for, the Mukhya Nagar Adhikari, or the Nagar Pramukh when the Mukhya Nagar Adhikari himself is the person concerned, will give him necessary facilities for the inspection of the record connected with the requisition for surcharge. If satisfied that the person surcharged has been unable for reasons beyond his control to consult the record for the purpose of furnishing his explanation the State Government or the Mukhya Nagar Adhikari, as the case may notwithstanding anything contained on application from the person surcharged, allow a reasonable extension of time for submission of his explanation.

4. (1) If on receipt of any information or report the State Government are of the opinion that there has been a loss, waste or misapplication of any money or other property belonging to the Mahapalika as a direct consequence of neglect or misconduct of the Nagar Pramukh they may call for his explanation in accordance with the provisions of clause (a) of sub-rule (1) of Rule 3 :

Provided that in the case of loss, waste or misapplication occurring as a result of a resolution of the Mahapalika, no explanation shall be called from the Nagar Pramukh if he is recorded in the minutes of the meeting as having advised the Mahapalika against the irregularity.

(2) The provisions of sub-rule (4) of Rule 3, sub-rule (1) of Rule 5 along with the provisions thereto and Rule 7, *mutatis mutandis* apply to the proceedings against the Nagar Pramukh.

5. **Procedure after explanation or when no explanation is furnished.**—(1) In cases covered by clause (a) of sub-rule (1) of Rule 3, the State Government may, after the expiry of the period prescribed and after considering the explanation, if any, received within time, surcharge the Up Nagar Pramukh, Vishishta Sadasya, Sabhasad, Mukhya Nagar Adhikari or any other officer or servant of the Mahapalika, as the case may be, with the whole or part of the sum for which such Up Nagar Pramukh, Vishishta Sadasya, Sabhasad, Mukhya Nagar Adhikari or other officer or servant of the Mahapalika may, in their opinion, be liable.

(2) In cases covered by clause (b) of sub-rule (1) of Rule 3, the Mukhya Nagar Adhikari shall take necessary action as indicated in the forgoing sub-rule :

Provided that no Up Nagar Pramukh, Vishishta Sadasya, Sabhasad, Mukhya Nagar Adhikari or any other officer or servant would be liable to the surcharge, if from the explanation or otherwise the State Government or the Mukhya Nagar Adhikari, as the case may be, are satisfied that the loss, waste

or misapplication, was caused by an act of the Up Nagar Pramukh, Vishishta Sadasya, Sabhasad or Mukhya Nagar Adhikari or officer or servant in the *bona fide* discharge of his duties as such :

Provided further, that in the case of loss, waste or misapplication occurring a result of a resolution of the Mahapalika or a Committee, the amount of surcharge shall be divided equally among all such members as are recorded in the minutes of the Mahapalika or the Committee as having voted for or remained neutral in respect of such resolution and whom the State Government consider responsible for the loss, waste or misapplication :

Provided also that no Up Nagar Pramukh, Vishishta Sadasya, Sabhasad or officer or servant shall be liable for any loss, waste or misapplication after the expiry of six years from the occurrence of such loss, waste or misapplication or after the expiry of three years from the date of his ceasing to be Up Nagar Pramukh, Sabhasad, Vishishta Sadasya or officer or servant of the Mahapalika whichever is later.

6. Right of appeal.—(1) Any officer or servant of the Mahapalika aggrieved from an order of surcharge passed by the Mukhya Nagar Adhikari under sub-rule (2) of Rule 5 may appeal to the Commissioner of the division within thirty days from the date on which such order is communicated to him. The Commissioner may confirm, rescind or vary the order passed by the Mukhya Nagar Adhikari or may pass such order as he may consider fit.

(2) The officer or servant concerned may, within thirty days from the date of communication of the order of the Commissioner under sub-rule (1), prefer a revision to the State Government who shall pass such orders thereon as they consider fit.

(3) The order of surcharge passed by the State Government under sub-rule (1) of Rule 5 shall be final.

7. Recovery of surcharge and stay of proceedings.—(1) The Up Nagar Pramukh, Vishishta Sadasya or Sabhasad or any officer or servant of the Mahapalika who has been surcharged shall pay the amount with which he has been surcharged within three months from the date of communication to him of the order of surcharge by the State Government or the Mukhya Nagar Adhikari, as the case may be :

Provided that when an appeal has been preferred under sub-rule (1) of Rule 6 or a revision has been filed under sub-rule (2) of the said rule all proceedings for recovery of the surcharge shall be stayed until the appeal or the revision has been finally decided.

(2) If the amount of surcharge is not paid within the period specified in sub-rule (1) or in case of appeal or revision, as the case may be, under Rule 6, within three months from the date of communication of the result of appeal or revision, the amount, or if there has been a reduction in it as a result of appeal or revision, the reduced amount, shall be recoverable in the manner provided in Chapter XXI of the U. P. Nagar Mahapalika Adhinyam, 1959 :

Provided that when the surcharge is against the Mukhya Nagar Adhikari, the amount thereof shall be recovered according to such directions as the State Government may give in each case.

Note.—It shall devolve upon the Mukhya Nagar Adhikari to see that statutory functions regarding issue of notice of demand and distress warrants are discharged promptly and faithfully.

8. Institution of Civil Suits.—Nothing in these rules shall affect the right of an aggrieved person from seeking redress in a civil court by filing within three months a suit against an order of surcharge passed against him under these rules.

9. Mahapalika to pay any cost incurred by the State Government in suit.—Where a suit is instituted to question an order of surcharge and the State Government or the Mukhya Nagar Adhikari, as the case may be, is a defendant in such suit, all costs incurred in defending the suit shall be paid out of Mahapalika fund and it shall be the duty of the Mukhya Nagar Adhikari to make such payments without delay.

RULES FOR DISBURSEMENT OF LOANS UNDER THE MIDDLE INCOME GROUP HOUSING SCHEME

English translation of Niwas Vibhag Notification No O-32-P/XXXVII—202-H-59, dated 16th June, 1966, published in U. P. Gazette, Part 1-(ka), dated June 25, 1966, p. 1597

In exercise of the powers under clause (e) of sub-section 2 of Section 342 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), read with sub-section (1) of Section 540 of the said Adhiniyam and all other powers in this behalf the Governor of Uttar Pradesh is pleased to make the following rule for disbursement of loans under the Middle Income Group Housing Scheme after their previous publication as required by sub-section (2) of Section 540 of the said Adhiniyam under Notification No. O-32-P/XXXVII—202-H-59, dated April 20, 1965 :

1. Short title and commencement.—(1) These rules shall be called the Rules for Disbursement of Loans under the Middle Income Group Housing Scheme.

(2) They shall come into force with effect from the date of their publication in the *Gazette*.

2. (1) All loans received by the Mahapalika from the State Government under the Middle Income Group Housing Scheme shall be received by the Mukhya Nagar Adhikari and shall forthwith be deposited to the credit of the Development Fund amount of the Mahapalika in the State Bank of India or such other scheduled bank or banks as the Mahapalika may with the sanction of the State Government appoint.

(2) The amount of loan received under this Scheme shall be shown under the head "Development Fund and other Special Funds—Accounts—XXVII—Loans raised from Government", and further classified as follows :

(i) for purchase of land for construction of houses ;

(ii) for construction of houses by individuals or the Mahapalika.

The expenditure from these amounts shall be exhibited under corresponding heads on the expenditure side of the budget under the sub-heads "XXX Works (2) Improvement of Land" and "(6) Building" as the case may be. The disbursements to individuals shall be shown under the minor head "(10) Miscellaneous" under the same sub-head.

3. Application of the money.—The amount so received shall be applied to—

- (i) construction of houses by the Nagar Mahapalika ; and
- (ii) advancing loan to persons having an annual income exceeding Rs. 6,000 but not exceeding Rs. 15,000.

4. Maintenance of accounts.—The accounts in respect of the loans disbursed out of the amount received from the State Government under Middle Income Group Housing Scheme shall be maintained in a separate register so as to ensure that the progress in respect of every Scheme may be readily ascertained at any time.

5. Eligibility for loans.—A person desirous of constructing a house for residential purposes within the limits of the city or within such area outside the limits of the city as may be specified in the Notification under Section 354 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), shall be eligible for the loan, provided he satisfies the following conditions :

- (a) that his annual income is not less than Rs. 6,001 and not more than Rs. 15,000 exclusive of the income of other earning members of the family ;
- (b) that he does not own any house in his own name or in the name of his wife/minor children within the limits of the city or within such area outside the limits of the city as may be specified in the Notification under Section 354 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959) ;
- (c) that he utilises the loan for the construction of a house which is required for his *bona fide* residential purposes ;
- (d) that he does not have more than one house in any other Nagar Mahapalika/Nagarpalika ;
- (e) he has not taken any loan for construction of house or purchase of a house under any Housing Scheme of the State or the Central Government either in his own name or in the name of his wife or dependent child ;
- (f) that he is not a displaced person unless the District Relief and Rehabilitation Officer of the City certifies that he has not taken any loan for construction of a house under any of the Schemes of Relief and Rehabilitation Department ; and
- (g) that the cost of construction of the house (exclusive of cost of land) shall not exceed Rs. 30,000.

6. Amount of loan.—(1) The amount of the loan shall be restricted to eighty per cent. of the cost of construction of the house inclusive of the value of the land subject to a maximum of Rs. 20,000, per house.

(2) Where a person does not already own land for the construction of the house, a loan of an amount not exceeding one-fourth of such loan may be sanctioned to him for purchasing land for the construction of such house, provided :

- (i) he, out of his own funds contributes towards the purchase of such land an amount not less than one-fourth of the total sanctioned loan ; and

- (ii) the total amount of loan for the construction of house and purchase of land therefor does not exceed Rs. 20,000.

7. Security for the loan.—(1) Every borrower shall be required to furnish the following security :

(i) Personal security of the borrower himself.

(ii) Mortgage in favour of Nagar Mahapalika of the land and house proposed to be constructed thereon.

(iii) One security of any person other than the borrower.

(2) Where loan for purchase of land for constructing a house is sanctioned under sub-rule (2) of Rule 6 to any person, he shall, in addition to the securities mentioned in sub rule (1), furnish any of the following securities of the value of such loan :

(i) Hypothecation of Government securities.

(ii) Assignment in favour of Mahapalika of an Insurance Policy or Fixed Deposit Receipt of a Bank or any other form of guarantee.

(iii) Simple mortgage of immovable property.

(iv) Any other property to the satisfaction of the Nagar Mahapalika.

(3) The security referred to in clause (iii) of sub-rule (1) shall stand discharged as soon as the house has been completed.

(4) The security referred to in sub-rule (2) shall stand discharged as soon as mortgage under clause (ii) of sub-rule (1) is duly executed.

8. Rate of interest of the loan.—The loan shall be advanced on interest at such rate as may be prescribed by the State Government from time to time.

9. Repayment of loan with interest thereon.—(1) The loan will carry interest from then date on which it is advanced.

(2) For the the first twelve months from the date of advancing the loan only simple interest as provided in these rules shall be paid and thereafter the principal and interest thereon shall be paid in equated monthly instalments.

10. Application for loans.—All applications for loan shall be submitted to the Mukhya Nagar Adhikari in printed form which may be obtained from the office of the Mukhya Nagar Adhikari on payment of rupees two only. Documents and certificates mentioned in the application form shall invariably accompany the application.

11. Sanction for loan.—The Mukhya Nagar Adhikari shall, after receipt of the applications, cause such scrutiny and enquiries to be made as he may deem proper and on completion thereof he shall pass necessary orders on the application.

12. Priorities in advancement of loans.—Priorities in granting of loans shall be fixed in the following order :

- (i) Applicants whose houses have been demolished or otherwise acquired in connection with any development scheme and they hold a plot of land.

- (ii) Applicants having do residential house in the city but owning plot of land on which a house can be constructed.
- (iii) Applicants having no house of their own and also having no plot of land but desirous of of building a house on a plot of land leased out or sold to them by the Mahapalika.
- (iv) Any other eligible person.

13. Disbursement of loan.—(1) (i) Loan for construction of house sanctioned excluding the loan advanced for purchasing land for constructing the house shall be advanced in three instalments consisting of twenty-five per cent., fifty per cent. and twenty five per cent. according to the progress of the construction of the house and in no case shall the loan be advanced in lump sum.

(ii) The first instalment, equal to twenty-five per cent of the total amount of the sanctioned loan shall released only when the borrower has executed the mortgage deed, complied with the required necessary formalities and the Mukhya Nagar Adhikari is fully satisfied on the basis of the documentary evidence produced by the borrower and after causing spot inspection to be made that the borrower has invested from his own resources at least twenty-five per cent. of the totol loan.

(iii) The second and third instalments not exceeding fifty per cent. and twenty-five per cent. of the sanctioned loan, respectively, shall be paid when the house in question is verified to have been constructed up to plinth level and roof level, respectively.

(iv) If the amount of the first instalment of the loan is not draw within three months from the date of sanction, the loan may be cancelled.

(v) The Mukhya Nagar Adhikari shall not ordinarily take more than two weeks in verifying the actual progress made in tne construction from the date of application by the borrower for the release of the instalment.

(vi) The Mukhya Nagar Adhikari shall satisfy himself that the house has been completed according to plan and specifications and the borrower shall furnish a certificate to this effect to the Mukhya Nagar Adhikari .

(2) (i) The advance for purchase of land shall be sanctioned in one lump sum after the borrower has furnished the security required therefor under these rules.

(ii) The borrower shall be required to purchase the land within two months of the advance of the loan for the purpose.

14. Restriction on Loans.—(1) Separate loans shall not be admissible on a joint basis. Maximum loan for one single house shall not, in any case, exceed the limit laid down in Rule 6.

(2) No loan shall be admissible for additions, alterations or extension of an existing house.

(3) No loan shall be given for construction of a shop-cum-residential accommodation.

(4) Loan under this Scheme is admissible for construction of new houses only and shall not, therefore, be advanced in respect of the houses, the construction of which has been started or completed by a prospective borrower before the loan is duly sanctioned by the Mahapalika (except the construction which is done in order to make up the investment of the borrower).

15. Repayment and further interest in case of default.—Repayment shall be made in the manner laid down in Rule 9. Each instalment shall become due on the first day of every month. If any instalment remains unpaid by the fifteenth day of the month, the borrower shall be liable to pay further interest on such instalment at the rate of three per cent. per annum over and above the rate of interest laid down in Rule 8 till repayment. In case of any instalment remaining unpaid for six months or for breach of any provisions of the rules the entire unpaid loan with interest shall become payable forthwith.

16. Full repayment before 23½ years.—It shall be open to a borrower to deposit the entire amount outstanding against him at any time during the term of repayment of 23½ years.

17. Plans and specifications.—The intending borrower shall get his building plan sanctioned by the Mahapalika according to the specifications furnished to him by the Mahapalika with the application form and in accordance with the directions of the State Government issued from time to time.

18. Insurance of house against loss or damage by fire.—The borrower shall get insured the house against fire in the Life Insurance Corporation of India, or the Indian Insurance Companies' Association Pool, Bombay, within one month from the date of completion of the house.

19. The State Government may relax any of the above rules as it may, having regard to natural justice in special circumstances of a case, consider proper :

Annexure "A"

Application form for loan under the Middle Income Group Housing Scheme

(Note.—Please give clear statements in the columns provided in the form and enclose documents and certificates of your statements.)

Proof Enclosure no.

-
1. Amount of loan applied for Rs.....
 2. Name of applicant
(in Block letters).....
Son of
 3. Permanent address

4. Postal address

.....

(Note.—Any change in address must be communicated to the sanctioning authority without delay.)

5. Are you a displaced person migrating from Pakistan? —

If so, have you taken any loan for a house under the Relief and Rehabilitation Scheme?.....

Has a house been allotted to you under the said Scheme?

(Note.—Please enclose certificate issued by the District Relief and Rehabilitation Officer in support of your statement.)

6. Age of the applicant.....years.

7. Annual income with source of income.....

(Note.—Documentary evidence of income assessed for purposes of income-tax or a certificate from the employer to the effect that the borrower has been assessed to income-tax and that he is eligible for grant of loan under these rules will be taken in proof of the annual income of the intending borrower.)

8. Occupation with full particulars.....

9. If a Government servant, please state whether you are in Central or State Service.....

10. Total area of the plot (in square feet).....

11. Plinth area of the proposed house.....sq. ft.

12. Estimate of cost with name and description of technical person who has verified the estimate of cost.....Rs.....

Encl. no.....
 Certificate by Sri.....
 Designation and address.....

13. Is the proposed house situated in City or Cantonment Area

14. Has the plan of the proposed house been sanctioned by the Mahapalika ?

15. Is the proposed plot of land free encumbrances ?

(Please enclose certificate of person who examined the Registration office record).

.....
Please enclose sanctioned Plan Enclosure no.....

.....
Registration record verified by Sri.....

.....
Designation.....

.....
Address.....

.....
Enclosure no.....

16. Other liabilities of the applicant, if any.....

17. Do you undertake to complete the construction of the house within twelve months of the receipt of the first instalment of the loan ?.....

18. Do you undertake to repay the loan together with interest at such rate as may be prescribed by the State Government thereon in 282 equated monthly instalments in a period not exceeding $23\frac{1}{2}$ years ?.....

19. Do you undertake to invest at least twenty per cent. of the total cost of the proposed house (inclusive of the land) ?.....

20. Have you taken any other loan from the Government or from your Provident Fund ?

If so, please given particulars.....

Declaration by the applicant

21. I hereby declare :

- (1) That I am the absolute owner of the proposed site of building.
- (2) That the statements made by me in the application are correct.
- (3) That I do not own any house within the limits of the city or with-

in the area outside the limits of the city as is specified in the notification under Section 354 of the U. P. Nagar Mahapalika Adhiniyam, 1959.

- (4) That I have not obtained any financial assistance for the construction of a house from any Government (Central or State) source previously.

Date.....

Signature of applicant

Witness :

Name.....

Address

To be signed by M.P./M.L.A./M.L.C./Member of the Mahapalika/
Honorary Magistrate/or a Gazetted Officer.

I (Name)-----designation-----
-----address-----certify that Sri-----
----- (applicant) is personally known to me and to the best of my
knowledge and belief the statements made by him in the application form
are correct.

Date-----

Signature

Annexure "B"

Specification for construction of houses under the Middle Income Group Housing Scheme

1. (a) Local streets except as hereinafter provided shall have a minimum width of 40 feet streets adjoining a park or any such other public open space, i.e., with development only on one side may have a width of 30 feet.
- (b) Sanitary lanes should be of a minimum width of 12 feet in the rear of all property fronting on all roads.
- (c) The minimum size of any plot should not be less than 1,800 square feet with minimum average depth of 60 feet.
- (d) An area of not less than 10 per cent. of the gross area should be left open to be utilised as parks or children's play spaces.
2. All houses plans must be drawn properly to a scale of 8 feet to an inch and should show plans of all the floors, all streets-elevations, and sections of which one must be through stair-case. The site plan should show the location of the house, width of front side and rear yards (if any), drainage lines and water supply lines.
3. Every house should have at least two rooms, one bath, one W. C. and a kitchen.
4. The size of the living room shall not be less than 100 square feet with a minimum size of 9 feet. Other size shall not be less than the following:

1. Kitchen

2. Latrine

... 60 square feet.

... 12 square feet.

3. Bath

... 16 square feet.

4. Combined W. C. and bath.

... 28 square feet.

5. An open space of not less than 4 feet in width must be left along the entire frontage of the plot. In case the plot abuts two or more roads such open space must be left along all the roads.

6. Shop are not permissible.

7. All rooms should have at least one window, opening directly to the open air or an open verandah. The aggregate open area of all the windows should not be more than 10 per cent. of the floor area

8. Not more than $\frac{2}{3}$ rd of the total area of the plot should be covered.

9. The plinth area of a house should not be less than 400 sq. ft. and not more than 3200 sq. ft.

10. No living room should be less than 11 feet in height measured from the floor finish to the next above floor finish.

11. Other height should be as below :

Kitchen 10 feet clear from floor to ceiling.

Garrage, latrine, bath, W. C., and store 8 feet clear from floor to ceiling.

12. Any part of the house except garrage, and servant quarters should not be less than $1\frac{1}{2}$ feet above the determined level of the abutting street, footpath or the surrounding ground. The plinth height of the garrages and the servant quarters may however be reduced to one foot.

13. **Fire places and chullah flues.**—Fire places and chullah flues will have proper flues to make them smokeless. Design may smokeless. Design may vary according to requirements.

14. **Apron.**—3 feet wide and $4\frac{1}{2}$ " thick (unrammed thickness) rammed kankar or flat bricks laid in kankar, lime or 1:6 cement and sand mortar over 3 lime concrete and pointed with 1:2 cement and sand mortar apron shall be provided in front and sides of the main building.

Note.—There will, however, be no objection if the borrower adopts equivalent or, better specification for any particular item in the house.

15. **Foundation and plinth.**—The foundation concrete shall consist of 100 c. ft. of $1\frac{1}{2}$ guage first class brick ballast and 33 c. ft. of kankar lime or one part white lime, three parts surkhi or cinder and six parts brick ballast. The brick work in foundation and plinth shall be of first class bricks in 1:6 cement and local sand mortar or 1:3 white lime and surkhi or cinder mortar.

16. **Damp proof course.**—It shall be $\frac{3}{4}$ " thick, and would consist of cement and coarse sand mixed in the ratio of 1:2 with 5 per cent. of RUDLO or Composeal in the ratio of one packet to one bag of cement. It will be laid on walls at plinth level.

17. **Superstructure masonry.**—All superstructure masonry shall be in first class brick work in mud except at the following places which shall be in first class brick in 1:6 cement mortar or 1:3 white lime and surkhi or cinder mortar :

- (a) Verandha pillars.
- (b) Jambs of all doors and windows and opening up to a width or $13\frac{1}{2}$ ".
- (c) Bottom 6" at floor level and top 6" at roof level.
- (d) $4\frac{1}{2}$ " thick window sills.
- (e) Courtyard walls pillars.
- (f) All $4\frac{1}{2}$ " thick walls of bath and W. C.'s.

Note.— $1\frac{1}{2}$ " reveal shall be given on walls along all chaukhats.)

18. Chaukhats.—These shall be made of Indian *sal*. The size of door chaukhats shall be at least $3'' \times 3''$ and that of window $2'' \times 3''$. Hidden faces of chaukhats shall be given two coats of hot coaltar.

Door chaukhats shall be fixed with six number $1\frac{1}{2}'' \times \frac{1}{2}'' \times 9''$ long hold fasts and window chaukhats shall be fixed with 4 number of such hold fasts.

19. Lintels over all verandahs and other openings and sunshades.—These shall be reinforced brick work with first class bricks and cement and coarse sand mortar in the ratio of 1:3 or of reinforced cement concrete in the ratio of 1 part cement, 2 parts coarse sand and 4 parts of stone grit.

In those areas where sand or some other type of stone slabs are available easily and cheap, the lintels, *etc.*, can be of stone slabs of suitable thickness.

20. Roofs.—These can be one of the following types :

- (a) Reinforced brick roofing or reinforced cement concrete roof.
- (b) Jack arch roofing.
- (c) A. C. sheet roofing.
- (d) Stone or brick tiles laid on wooden 'Karis'.

Reinforced brick roof shall consist of first class bricks laid in 1:3 cement and coarse sand mortar with reinforcement according to design. The thickness of R. B. roofs can be kept $3''$, $4\frac{1}{2}''$, $6''$ and $7\frac{1}{2}''$ according to span. On roofs open to sun $1\frac{1}{2}''$ insulation layer consisting of $\frac{1}{2}''$ of earth and $1''$ of sand shall be provided and $4\frac{1}{2}''$ thick lime concrete terracing shall be provided over insulation layer. It shall consist of 100 c. ft. of $1''$ gauge first class brick ballast mixed with 45 c. ft. of kankar lime, of 16 c. ft. of white lime with 32 c. ft. of surkhi. Roof terracing shall have a minimum slope of 1 in 48. For first floor construction works floor can be laid directly over the roof. Sloping roofs can be laid over bath-rooms and W. C. on these roofs $\frac{1}{2}''$ thick 1:2 cement and coarse sand plaster mixed with some water proofing compound shall be provided.

Reinforced cement concrete can also be laid for roof where good bricks are not available or where it is not possible to lay R. B. roof. It shall consist of 1 part of cement, 2 parts coarse sand and 4 parts stone. Reinforcement shall be provided.

Jack arch roofing consists of $4\frac{1}{2}''$ thick jack arches of $4'$ \times to $6'$ span having a rise equal to $1/8''$ span with first class bricks in kankar lime or 1:6 cement and sand mortar supported on R. S. Joists. The end spans of arches shall be provided with the required size of the rods. Haunches shall be filled with concrete and span at insulation layer and lime concrete roof terracing shall be provided.

Where it is not essential to keep the top of roof flat, Asbestos cement sheet roof can be provided. These sheets are supported on wooden rafters and battens. Rafters are anchored to the walls by means of anchor-bolts embedded in concrete. A. C. sheets are fastened to the battens by means of J. bolts and nuts or coach screws. The sheets shall be fixed in a manner so that there is lap of at least 6 longitudinally and lap of one conjugation transversely. To avoid any leakage, bitumen washers shall be provided with every nut and holes should be drilled and shall not be punched.

If it is not possible to provide any of the above types of roof, wooden rafters (Karis) of seasoned *sal* wood or mango wood can be provided at suitable intervals. Over these Karis can be provided stone slabs or brick tiles. Insulation layer and lime concrete shall always be provided over stone slab brick tiles.

21. Floors.—Floors can be any of the following types :

(1) 1" plain cement concrete floor with over 3" thick lime concrete. The cement concrete shall consist of 1 part cement, 2 parts coarse sand and 4 parts $\frac{3}{4}$ " stone grit. The floors shall be finished with $\frac{1}{8}$ " thick layer of 4 parts cement mixed with 1 part marble dust. The floors shall be laid in alternative panels and no panel shall be more than 18 square feet in area.

(2) **Brick on edge floors.**—It consists of first class brick laid on edge with kankar lime or white lime and surkhi or cinder (1 : 3) mortar or (1 : 6) cement and sand mortar and sand mortar over 3" thick lime concrete. The floor shall be pointed with 1 : 2 cement and sand mortar.

Specification for lime concrete in floors shall be same as for foundation concrete.

22. Door and windows leaves.—Door leaves shall be atleast $1\frac{1}{2}$ " thick of Shisham, Deodar, Teak or plywood and should be fully panelled.

All window leaves shall be fully glazed and should be at least $1\frac{1}{2}$ " thick of Deodar, Shisham or Teak.

Fittings can be of steel or brass.

23. Finishing.—All interior and exterior faces of walls, ceiling, chajjas, staircases, etc., will be given cement plaster $\frac{1}{2}$ " thick of cement and local sand mortar in 1 : 6 ratio except at following places specified separately. Plaster of ceiling shall be $\frac{1}{2}$ " thick but of 1 : 4 mixture :

(a) Struck cement pointing, if any, in 1 : 2 cement and local sand mortar on the outer face of the wall.

(b) 1 : 2 cement and local sand plaster $\frac{3}{8}$ " thick—

(i) Up to 4' height on walls inside the baths.

(ii) Riser of steps.

(iii) Sides of outside steps.

All inside walls and ceiling of rooms, baths and W. C., roofed over and verandah shall be given 3 coats of white wash. Soffits of staircase lintels and their parapets will also be white washed.

(3) All doors and windows shall be painted with one painting coat and two coats of approved varnish or paint.

24. Contraction joint on roof terracing.—All roof slabs will have

1/8" joints on internal wall except 4½" walls ½" contraction joints with raised edges will also be provided in roof terracing at all places where there is a joint in roof. These joints will be filled with hot mixture of bitumen and sand. The slopes of terracing should be such that water does not cross these joints.

25. **Almirah shelves.**—9" wide and 3½" to 4" long R. C. C. shelves will be 1½" thick and all the sides plastered with 1 : 6 cement mortar. The concrete for R. C. C. shall consist of 1 part cement, 2 parts coarse sand and 4 parts stone chips of 3/4" gauge.

26. **Rain water spouts.**—These will be of cast iron or Asbestos pipes 4" diameter Platform 2' x 3' will be constructed on ground level below these spouts to catch the water. The platforms will be of 1 : 2 : 4, i. e., and of 1" thickness over 3" lime concrete as in case of floors.

U. P. NAGAR MAHAPALIKA SHIKSHA SEWA NIYAMAVALI, 1971¹

[EXTRACTS]

PART I

General

1. **Short title, scope and Commencement.**—(1) These rules may be called the Uttar Pradesh Nagar Mahapalika Shiksha Niyamavali, 1971.

(2) They shall come into force with effect from the date of their publication in the *Gazette*.

(3) These rules shall apply *mutatis mutandis* to the Women's Branch of the service, except where the context indicates that the reference is to the Men's Branch only, and shall not apply to the servants other than those belonging to the different cadres in the Education Department of a Mahapalika.

(4) These rules shall not apply to the ministerial and class IV employees of the Education Department and educational institutions of a Mahapalika whose terms and conditions of service shall be regulated by and under the Uttar Pradesh Nagar Mahapalika Sewa Niyamavali, 1962. These rules shall also not apply to the Superintendent/Lady Superintendent of Education of a Mahapalika whose conditions of service are regulated by and under the Uttar Pradesh Palika (Centralised) Services Rules, 1966.

2. **Definitions.**—In these rules, unless there is anything repugnant in the subject or context—

(i) "Act" means the U. P. Nagar Mahapalika Adhiniyam, 1959 (U. P. Act no. II of 1959);

(ii) "advertisement" means notice or announcement published in the prominent daily newspapers including a local newspaper having State-wide circulation;

(iii) "appointment authority" means the authority empowered under sub-section (1), (2) (b) or 3 (b) of section 10/ of the Act, as the case may be, to appoint servants of the Mahapalika to whom these rules apply;

(iv) "cadre" means the strength of a service or a part of a service sanctioned as a separate unit;

1. Published in U. P. Gazette Part I-A, Page 3407 dated 13th November, 1971.

- (v) "citizen of India" means a person who is or is deemed to be a citizen of India under Part II of the Constitution ;
- (vi) "Commission" means the Public Service Commission, Uttar Pradesh ;
- (vii) "Commissioner of Division" means the Commissioner of the Division in which the Nagar Mahapalika is situated and any Additional Commissioner to whom the Commissioner of the Division has delegated his functions under the Act ;
- (viii) "Constitution" means the Constitution of India ;
- (ix) "Department" means the Education Department of a Mahapalika ;
- (x) "direct recruitment" means recruitment made under these rules otherwise than by promotion or transfer ;
- (xi) "educational institution" means an institution providing education in recognised courses of study in any branch of learning or giving instruction in Teachers' Training, music and dancing and includes a post-graduate or an under-graduate Degree College, an Intermediate College, a High School, a Montessori or a Nursery School, Senior Basic (Junior High) and Junior Basic (Primary) Schools grouped under one establishment under the charge of a Superintendent of Education and Lady Superintendent of Education, a Teacher's Training School and a Sangeet Vidyalaya ;
- (xii) "Executive Committee" means the Executive Committee constituted under section 51 of the Act ;
- (xiii) "Government" or "State Government" means the Government of Uttar Pradesh ;
- (xiv) "Governor" means the Governor of Uttar Pradesh ;
- (xv) "Mahapalika" means a Mahapalika established under section 4 of the Act ;
- (xvi) "Mukhya Nagar Adhikari" means the Mukhya Nagar Adhikari appointed under section 58 of the Act, an Up Nagar Adhikari, a Sahayak Nagar Adhikari and a Shiksha Adhikari appointed under section 107, to whom the Mukhya Nagar Adhikari has delegated his functions under the Act ;
- (xvii) "prescribed" means prescribed by the Act or by rule or Order made thereunder ;
- (xviii) "retirement" means retirement from service on attaining the age of superannuation ;
- (xix) "retained" means continuance in service by way of extension or re-employment ;
- (xx) "rule" means rule made under the powers conferred by the Act and contained in this Niyamavali ;
- (xxi) "Scheduled Castes" means the castes specified in the Constitution (Scheduled Castes) Order, 1958 ;
- (xxii) "section" means section of the Act ;

- (xxiii) "Selection Committee" means the committee constituted under proviso to sub-section (4) of section 107 of the Act ;
- (xxiv) "seniority" means seniority in any cadre of the service as determined in accordance with rule 10 of these Rules :
- (xxv) "servant" means a person appointed under these Rules or the Act for tuitional and supervisory duties in the Education Department of a Mahapalika ;
- (xxvi) "service" means the Mahapalika Educational Service (both Men's and Women's Branch) of a Mahapalika ;
- (xxvii) "Superintendent of Education" means an officer incharge of Primary and Junior High (Junior Basic and Senior Basic) Education and appointed under the Uttar Pradesh Palika Centralised Services Rules, 1966, and includes a Lady Superintendent of Education.

3. Nationality.—A candidate for direct recruitment to any post in the service must be :

- (a) a citizen of India, or
- (b) a subject of Sikkim, or
- (c) a Tibetan who came over to India before the 1st January, 1962, with the intention of permanently settling in India, or
- (d) a person of Indian origin who has migrated from Pakistan with the intention of permanently settling in India :

Provided that a candidate belonging to category (c) or (d) above must be a person in whose favour a certificate of eligibility has been issued by the Government of India :

Provided further that a candidate belonging to category (c) above will also be required to obtain a certificate of eligibility granted by the Deputy Inspector General of Police, Intelligence Branch, Uttar Pradesh :

Provided also that if a candidate belongs to category (d) above, the certificate of eligibility will be valid only for a period of one year from the date of his appointment beyond which he can be retained in service only if he has become a citizen of India.

Note.—Before a Tibetan of category (c) above is finally approved for appointment the specific approval of Government shall be obtained by the appointing authority.

4 Age.—(1) A candidate for direct recruitment to any post in the service under a Mahapalika shall be not less than 18 years and not more than 30 years of age on the first day of July of the year in which the last date for receipt of application for recruitment in each case falls :

Provided firstly, that the maximum age-limit shall not be applicable to the servants referred to in clause (e) of section 577 of the Act and those appointed to the service of a Mahapalika between February 1, 1960 and the date of the coming into force of these rules :

Provided, secondly, that the maximum age-limit in the case of posts having an initial salary of rupees five hundred per mensem or more shall be 45 years :

Provided, thirdly, that the maximum age-limit in case of recruitment of Assistant Teachers of Junior High Schools and Assistant Teachers of Primary Schools shall be greater by fifteen years and five years, respectively :

Provided, fourthly, that the maximum age-limit for candidates of Scheduled Castes shall be greater by five years than the corresponding age-limits prescribed for other candidates, subject to the condition that the concession of five years shall not be allowed in the case of posts for which the maximum age-limit has been otherwise raised :

Provided, lastly, that where the qualification and experience prescribed for recruitment to a particular post or posts are such that these cannot reasonably be expected to be acquired by any candidate within 18 years of age, the minimum age-limit may not be advertised for that post.

(2) Notwithstanding anything contained in sub-rule (1), the age-limit may be relaxed by the appointing authority where he considers it necessary in the interest of fair dealing or in public interest :

- (i) in respect of the posts within the purview of the Commission, in consultation with the Commission and after prior approval of the Government ; and
- (ii) in respect of any other post with the prior sanction of the Government.

5. Character.—(1) The character of a candidate for direct recruitment must be such as to render him suitable in all respects for employment under the Mahapalika. The appointing authority shall satisfy itself on this point and in doing so shall follow the instructions that may be in force or issued by the State Government from time to time.

(2) Every candidate for direct recruitment shall be required to submit a certificate of conduct and character from the Principal or head of the institution last attended and two certificates of character from two responsible persons (not related to the candidate), one of whom shall be a gazetted officer in active service of the State Government or Union Government, who are well acquainted with the private life of the candidate but unconnected with his school, college or University. The latter two certificates must not be more than six months old.

Note.—The form of certificate is given in Appendix 'A.'

6. Physical fitness.—No person shall be appointed to any post in the service under the Mahapalika by direct recruitment unless he be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his official duties. Before a candidate not already in permanent service of the Mahapalika or the State Government is finally approved for direct recruitment in a substantive or long-term temporary vacancy, he shall be required to produce a medical certificate of fitness—

- (a) from a member of the Mahapalika Medical Service not below grade II authorised by the Mahapalika for the purpose, if the candidate has been selected for appointment to a post carrying an initial salary of less than Rs. 200 per mensem ;
- (b) from the Civil Surgeon of the district if the candidate has been selected for appointment to a post carrying an initial salary of Rs. 200 per mensem or above but less than Rs. 500 per mensem ; and

- (c) from a Medical Board constituted by the State Government by general or special order Class I gazetted post under the State Government, in all other cases :

Provided that no woman candidate for permanent or long-term temporary appointment to a post in the service under the Mahapalika carrying an initial salary of less than Rs. 500 per mensem shall be required to undergo a medical examination by a male medical officer. In such a case, the appointing authority, may, at his discretion, accept, a certificate in the prescribed form either from a lady medical officer serving under the Mahapalika not below the rank of Chikitsa Adhikari, Grade I, in the Mahapalika and authorised by the Mahapalika for the purpose, or from an officer belonging to the Provincial Medical Service (Women I), in the city in which the Mahapalika is situated.

Provided further that in the case of a woman candidate for a post carrying an initial salary of Rs. 500 per mensem or more the Medical Board referred to in clause (c) shall be constituted in the same manner as for women candidates for class I gazetted posts under the State Government :

Provided also that the existing servants who have already undergone a medical examination and have been found physically fit shall not be required to produce the certificate of physical fitness at the time of their appointment to the posts created by the Mahapalika under section 106 of the Act.

7. Academic and other qualifications.—(1) A candidate for direct recruitment under these rules to the various categories of posts in the service, must possess the requisite qualifications prescribed by the State Government for that category of posts.

(2) In all cases of recruitment by promotion under these rules from a lower to the next higher grade a candidate must possess the requisite qualifications prescribed for the higher grade post.

(3) Notwithstanding anything contained in sub-rules (1) and (2) when it appears that the number of eligible candidates is small and the appointing authority is satisfied that an adequate field for selection is not available, the appointing authority may lower the requirement for the minimum number of years of teaching experience so as to ensure that an adequate number of candidates is available for selection—

(i) in respect of the posts within the purview of the Commission on the recommendation of the Commission ; and

(ii) in respect of all other posts on the recommendation of the Selection Committee.

8. Martial Status.—No male candidate who has more than one wife living and no female candidate who has married a man already having a wife shall be eligible for recruitment to any post in the service :

Provided that the appointing authority may, if satisfied that there are special grounds for exempting any person from the operation of the provisions of this rule, refer the matter to the Executive Committee whose decision shall be final.

9. Reservation for Scheduled Castes in direct recruitment to post.—Reservation for Scheduled Castes in direct recruitment to cadre of the service shall, as far as possible, be in accordance with such orders

of the Government for reservation as may from time to time be applicable to services under the Government.

Note.—A copy of the orders in force at the time of promulgation of these rules will be found in Appendix 'B.'

10 Seniority—(1) Separate seniority lists shall be maintained by the appointing authority for each class of posts in a group of the service under the Mahapalika.

(2) Seniority in any class of posts shall be determined according to the date of the order of appointment in a substantive capacity in that class :

Provided firstly that if any class of posts two or more persons are appointed substantively on the same date, their seniority *inter se*, shall be determined in accordance with the merit list on the basis of which they were appointed in the same batch. If no merit list exists, their *inter se* seniority shall be determined—

(i) according to total length of service in that class of post.

Explanation.—If any person prior to his appointment to a post in the Mahapalika has held any appointment in the same or equivalent scale either in the same class of post or in post with identical similar duties, in any local body in Uttar Pradesh the total length of such service on the previous post shall be taken into account in computing the total length of service ;

(ii) if the total length of service of two or more persons is equal, the person senior in age shall be placed above the person junior in age ;

Provided secondly, that *inter se* seniority of persons appointed by promotion in the same batch shall be determined in accordance with their relative seniority in the post from which they have been promoted ;

Provided, thirdly, that where recruitment, is made both by promotion and by direct recruitment the persons appointed by promotion shall be ranked senior to those appointed by direct recruitment in the same batch.

Provided, fourthly, that *inter se* seniority of persons appointed by promotion the same batch from different classes of posts shall be determined on the basis of their substantive scale of pay, the person drawing a higher scale of pay in one class of posts being placed senior to one drawing lower scale of pay in another class of posts ; and

Provided, lastly, that the appointing authority may direct that a servant whose period of probation is extended for failure to prove his fitness for confirmation in any particular class of posts in the service, be placed in the seniority list next below the last confirmed servant of that class.

(3) Seniority of servants referred to in clause (e) of section 577 of the Act, on their absorption under clause (f) of the said section against the corresponding posts created by the Mahapalika under section 106 of the Act, shall, to the extent not covered by sub-rule (2), be determined on the basis of their relative seniority in the respective grades immediately before the appointed day :

Provided that where a servant referred to in clause (e) of section 577 of the Act, has on or after February 1, 1960, been promoted to a higher grade, his seniority in the higher grade shall, on appointment, against corresponding higher grade posts, with the same or changed designation,

created by the Mahapalika under section 106 of the Act in lieu of the existing posts, be determined by the total length of service in the higher grade :

Provided, further, that where more than one such servants have been promoted in the same batch to the higher grade, their *inter se* seniority in the higher grade shall, on appointment against the corresponding higher grade posts, with the same or changed designation, created by the Mahapalika under section 106 of the Act in lieu of the existing posts, be determined on the basis of their relative seniority in the lower grade.

(4) In case of temporary servants appointed on or after February 1, 1960 seniority shall be determined by the total length of service in the same class of posts.

(5) For purposes of this rule, total length of service shall include continuous service in a temporary capacity also.

(6) If a candidate who is already in service has been selected by direct recruitment and also by promotion, he will be given the seniority which is more advantageous to him and will be deemed to have been recruited either directly or through promotion according to the manner in which the seniority has been assigned to him.

11. Fees.—(1) Candidates for direct recruitment under these rules to posts within the purview of the State Public Service Commission, shall pay to the Commission requisite application and interview fees as fixed from time to time by the Commission.

(2) Servants for recruitment by promotion under these rules will not be required to pay any fees.

(3) Candidates for direct recruitment under these rules selected for substantive or long term temporary appointment to posts in the service shall pay to the Civil Surgeon or the Medical Board, as the case may be, requisite fee for medical certificate of fitness. The fee shall be the same as payable from time to time by their counter parts for Government serv.ce.

(4) No claim for refund of these fees shall be entertained.

PART II

Recruitment

(Sections 107, 113 and 577)

A—In Consultation with the State Public Service Commission.

I—Procedure for Direct recruitment—

12. Requisition for selection.—(1). Where recruitment to any category of posts in the service has to be made by direct recruitment in consultation with the Commission, the Mukhya Nagar Adhikari shall himself or rity request the Commission, in the prescribed "Requisition Form" to make the selection and shall inform the Commission sufficiently in advance about the particulars of the post and shall specify all requisite details as to the nature of the vacancy, qualifications prescribed, scale of pay, method of recruitment and the date from which the vacancy is likely to occur. He shall also indicate whether any post is reserved for candidates belonging to the Scheduled Castes.

Not-.—The requisition form is given in Appendix 'C'.

(2) **Applications.**—(i) The Commissions shall advertise the posts and invite applications from the intending candidates on the application form prescribed by the Commission and obtainable free of cost from the Secretary to the Commission and the applications shall be submitted within such time as may be specified in the advertisement.

(ii) Subject to eligibility a candidate already in the service of the Mahapalika can also apply for direct recruitment to any other post in the service but in all such cases the application on the prescribed form shall be submitted to the Commission through the appointing authority.

(3) **Scrutiny of applications and interview.**—(i) The Commission shall scrutinise the applications received by them and require, having regard to the necessity for the due representations of candidates belonging to Scheduled Castes, such candidates as seem best qualified for appointment under these rules to deposit the requisite interview fees and to appear before them for interview at their own expense.

(ii) If the Commission so consider necessary they may invite on their own accord as well as, or, through the State Government, a suitable expert for being associated with them at the time of interview of the candidates.

(4) **Selected list.**—The Commission shall, after the interview, prepare a list of candidates in respect of each particular subject or category of posts advertised for, whom they consider most suitable for appointment, arranged in order of preference and containing where possible more names than the number of vacancies as indicated below :

(a) where the number of vacancies does not exceed four, twice the number ;

(b) where the number of vacancies for a post advertised for exceeds four, a number up to fifty per cent. in excess of the number of such vacancies.

(5) The Commission shall then forward the list prepared under sub-rule (4) of this rule to the Mukhya Nagar Adhikari for making appointments, by the competent authority, under section 107 of the Act in the order of preference indicated by the Commission.

II—Procedure for Recruitment by Promotion—

13. **Selection Committee.**—(1) For purposes of recruitment by promotion there shall be a Departmental Selection Committee consisting of the Mukhya Nagar Adhikari as Chairman and two other officers of the Mahapalika nominated by the Executive Committee as members.

(2) **Selection.**—Where recruitment to a post or any category of posts in the service has to be made by promotion, a selection on the basis of *inter se* seniority, subject to the rejection of the unfit, shall be made, in the light of the criteria laid down in sub-rule (3) below, by the Departmental Selection Committee from among all the eligible servants of the Mahapalika and the Committee will recommend the name or names of servants for promotion :

Provided that if in any year the appointing authority considers that a certain servant is exceptionally brilliant although he is much below in the seniority list for being considered for promotion under the basic rule he may be considered for promotion in the manner prescribed in sub-rule (5) below.

(3) **Criteria.**—In judging the suitability of a servant for promotion on the basis of seniority *inter se* subject to the rejection of the unfit, the Departmental Selection Committee shall, *inter alia* take into consideration the record of every eligible servant as regards the quality of his work, his trustworthiness, meritorious record or academic performance and fitness for appointment to the higher post. No servant shall be considered fit unless he is clearly a servant of more than average ability and his integrity is certified.

(4) In judging the exceptionally brilliant servant under the proviso to sub-rule (2) above due regard shall be had to the following qualities of the servant—

- (i) Exceptional academic achievements ;
- (ii) Competence ;
- (iii) Efficiency ;
- (iv) Initiative ;
- (v) Integrity ;
- (vi) Trustworthiness ;
- (vii) Missionary zeal ;
- (viii) Capacity for able guidance and efficient supervision ;
- (ix) Knowledge of progressive educational thought and development ; and
- (x) Superior quality of work.

(5) If in any year the appointing authority suggests a certain servant to be exceptionally brilliant his case shall be considered by the Departmental Selection Committee along with all the candidates senior to him in the light of the criteria laid down in sub rule (4) above and if the Departmental Selection Committee are also satisfied that the servant is exceptionally brilliant and not simply meritorious, they will recommend his name for promotion. The names for the remaining vacancies, if any, shall be recommended by the Departmental Selection Committee on the basis of seniority subject to the rejection of the unfit.

(6) **Submission of list to Commission.**—The Mukhya Nagar Adhikari will thereafter arrange the name or names of the selected servant or servants in accordance with sub-rule (2) or sub-rule (5) in the list in the order of their seniority in the lower posts and shall forward to the Commission the list of servant or servants selected together within the relevant papers including gradation list and the Character Roll of servants named in the list as well as of those who have been superseded, indicating the criteria which have been adopted in selecting the servants and stating the reasons for passing over the seniors, if any.

(7) **Commission's recommendations.**—The Commission shall consider the selection made by the Departmental Selection Committee and also examine whether any senior servant has been superseded without adequate justification and shall—

- (i) either concur with the selection made by the Departmental Selection Committee ; or
- (ii) express their disagreement and make their own recommendations.

14. Procedure for Absorption of existing Servants.—Where consultation of the Commission is necessary under the Act before making appointment of any servant referred to in clause (e) of section 577 to any post created under the Act, a reference shall, before making such appointments under the provisions of the Act, be made by the Mukhya Nagar Adhikari to the Commission to determine the suitability of the servant to hold the post and the recommendation of the Commission obtained. In case any servant is not approved by the Commission a reference shall be made to the State Government under rule 15 by the Mukhya Nagar Adhikari.

15. Procedure in case of difference of opinion.—Where the appointing authority disagrees in whole or in part with any recommendation of the Commission made under rule 12 (5) or 13 (7) or rule 14 above the Mukhya Nagar Adhikari shall cause a reference to be made under sub-section (6) of section 107 of the Act and forthwith forward to the State Government all the connected papers together with the grounds on which the recommendations of the Commission are not considered acceptable. The Government shall consider the grounds and Communicate to the Mukhya Nagar Adhikari and the Commission, their decision which shall be final.

B—On the Recommendation of the Selection Committee.—

16. Selection Committee—For purposes of recruitment, both direct and by promotion, to a post or category of posts in the service to which appointment is to be made under sub-section (3) (b) of section 107 of the Act, there shall be a Selection Committee consisting of the Mukhya Nagar Adhikari as Chairman and two other officers of the Mahapalika nominated by the Executive Committee as members.

I. Procedure for Direct Recruitment—

17. Advertisement—(1) Where recruitment to a post or category of posts in the service is to be made by direct recruitment, the appointing authority shall advertise the post or category of posts in the prominent daily newspapers including a local newspaper, if any, with State-wide circulation, giving all necessary particulars in regard to the nature of the vacancy, qualifications prescribed for the post, scale of pay, age, etc. and invite applications from the intending candidates on the prescribed application form obtainable on payment from the appointing authority or his nominee. The appointing authority shall also invite the names of and the applications on the prescribed form from the intending candidates through the District Employment Exchange within a reasonable time to be fixed by the appointing authority. The applications shall be submitted within such time as may be specified in the advertisement.

Note.—A prescribed form of application is given in Appendix 'D'

(2) **Scrutiny of applications.**—The application received, including the names (and the applicants forwarded by the District Employment Exchange, shall be serially numbered and entered in a register and the following particulars of the candidates noted under appropriate columns in the Register :

- (i) Name.
- (ii) Date of birth.
- (iii) Address.

- (iv) Examinations passed with the year of passing each examination; division secured, subjects of examinations and distinctions gained, if any.
- (v) Co-curricular activities.
- (vi) Training qualifications.
- (vii) Teaching experience, if any; post held and salary drawn with dates of commencement and termination of service in individual institutions.
- (viii) Games, sports, etc.
- (ix) Gist of conduct and character certificates.
- (x) Remarks.

The register shall constitute a permanent record of the institution. The applications received shall then be scrutinised by the Chairman of the Selection Committee and a list of candidates qualified for the post or category of posts prepared. The Chairman of the Selection Committee shall decide as to which candidates out of the list of qualified candidates prepared under this rule may be called for interview. The number of candidates called for interview may not (number of applicants permitting) be less than three times the number of vacancies to be filled. Mukhya Nagar Adhikari shall intimate under registered post all candidates called for interview the date, time and place of the selection giving reasonable time to the candidates to appear for the interview. The candidates will appear for interview before the Selection Committee at their own expense.

(3) **Interview and selection.**—A short statement showing the names, qualifications and other particulars of the candidates called for interview shall be prepared and placed before the Chairman and each member of the Selection Committee. The selection shall be made, having regard to the necessity for due representation of candidates belonging to Scheduled Castes, on basis of academic qualifications, training, teaching experience, capacity for supervision and control, administrative experience and general fitness of the candidate for the post or posts advertised. The Selection Committee shall after the interview prepare a list of candidates in respect of each particular subject or category of posts advertised for, whom they consider most suitable for appointment arranged in order of merit and containing where possible more names than the number of vacancies.

(4) The Selection Committee shall then submit the list prepared under sub-rule (3) of this rule and recommend to the Mukhya Nagar Adhikari for making appointment under sub-section (3) (b) of section 107 in the order of merit indicated by the Selection Committee.

(5) No member of the Selection Committee shall take part in selection if any relation of his is a candidate for the post.

II—Procedure for recruitment by Promotions

18. **Selection.**—(1) Where recruitment to a post or any category of posts in the service has to be made by promotion a selection on the basis of *inter se* seniority subject to the rejection of the unfit, shall be made, in the light of the criteria laid down in sub-rule (2) below by the Selection Committee constituted in rule 16 of these rules, from among all the eligible servants of the Mahapalika and the Selection Committee will recommend the

name or names of servants promotion stating the reasons for passing over the the seniors, if any.

(2) **Criteria**—In judging the suitability of a servant for promotion on the basis of seniority *inter se* subject to the rejection of the unfit, the Selection Committee, shall, *inter alia* take into consideration the record of every eligible servant as regards the quality of his work, his trust worthiness meritorious record of academic performance and general fitness for appointment to the higher post. No servant shall be considered fit unless he is clearly a servant of more than average ability and his integrity is certified.

(3) For purposes of selection under sub-rule (1) of this rule, the Mukhya Nagar Adhikari shall cause to be placed before the Selection Committee all the relevant papers, including the gradation list and the Character Roll of servant or servants for making recommendations under sub-rule (1) above. The Selection Committee shall indicate the criteria for its selection and also state reasons for passing over seniors, if any.

PART III

Appointment, Probation, Confirmation.

19. **Substantive appointment.**—(1) On the occurrence of substantive vacancies in any category of posts in the service the appointing authority shall, subject to the provisions of rules 6 and 9 of these Rules, under written formal orders, mentioning therein the designation of post, the salary, scale of pay and period of probation and the period within which he is to join, make appointments thereto from the lists prepared or recommendations made in accordance with rules 12 (5), 13 (7) (i), 13 (7) (ii), 17 (4), 18 (1), or in accordance with the decision of the State Government under rule 15, as the case may be, subject to the condition that he is satisfied that they are duly qualified in other respects also.

Provided, firstly, that in case where appointment to any category of posts in the service is made both by promotion and direct recruitment, the appointing authority shall make appointments in such vacancies by taking candidates alternately so far as this may be possible from the two list of promoted and directly recruited candidates. Candidates shall be taken in the order in which they stand in the respective lists and the first candidate taken shall be from the list of promoted candidates :

Provided, secondly, that a directly recruited candidate may lose his seniority if he is not available to join the service when a vacancy is offered to him :

Provided, lastly that the appointment of servants referred to in clause (e) of section 577 of the Act, who were confirmed in permanent posts before February 1, 1960, to the posts created by the Mahapalika under section 106 of the Act in lieu of the aforesaid posts, whether carrying the same designation or not, shall be made by the Mukhya Nagar Adhikari in accordance with the provisions of clause (f) of section 577 of the Act.

(2) The appointment of a directly recruited candidate failing to report for duty within the time allowed may be cancelled.

(3) **Temporary and officiating appointments**—The appointing authority shall make appointments in temporary and officiating vacancies also from the list, which will be valid for one year or the next selection whichever is earlier, of candidates recommended by the Commission or prepared by the Selection Committee, as the case may be :

Provided that in any year if the list is exhausted or if no candidate is available in that list, the appointing authority may, without consultation with the Commission, where such consultation is necessary, or without the recommendation of the Selection Committee, make appointments in such vacancies for a period not exceeding one year from amongst servants or persons possessing the qualifications prescribed for recruitment to those posts.

20. Probation.—(1) All persons appointed to the service whether by direct recruitment or by promotion in or against substantive vacancies shall be placed on probation for a period of one year :

Provided, firstly, that continuous service rendered in an officiating and/or temporary capacity on the same post or a higher post included in a cadre in the service may, at the discretion of the appointing authority, be allowed in whole or in part, to be counted by the appointing authority, towards the period of probation :

Provided, secondly, that the appointing authority may, for sufficient reasons to be recorded in writing extend the period of probation in individual cases, for a further period not exceeding one year. Any such order of extension shall specify the exact period for which the probation is extended :

Provided, lastly, that this sub-rule shall not apply to person—

- (i) who were permanent servants referred to in clause (e) of section 577 of the Act of the Municipality upon their appointment under clause (f) of that section ;
- (ii) who are servants of the State Government and whose services have been lent to the Mahapalika ; and
- (iii) who are appointed against or in substantive vacancies for short periods not exceeding six months pending completion of formalities for filling the vacancy on a permanent basis.

(2) If during or at the end of the period of probation or extended period of probation, it is found that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction as to the standard of work and conduct expected of him, his services may, if directly recruited, be dispensed with or without entitling him any notice or compensation ; or if appointed by promotion, reverted to the substantive post from which he has promoted.

21. Knowledge in Hindi.—(1) No probationer shall be confirmed in his appointment until he has passed the High School Examination of the Board of High School and Intermediate Education, U. P. with Compulsory Hindi as one of his subjects or the High School Examination in Compulsory Hindi only, or an equivalent Examination with or in Hindi (Regular and not Elementary) of an examining body situated within a State where Hindi is the Regional Language, or any one of the Examinations recognised as equivalent thereto (High School in Hindi).

Note.—The examinations at present recognised as equivalent to the High School Examination with or in Hindi are given in Appendix 'E'.

(2) The State Government may after considering the report and recommendations of the appointing authority grant exemption from the operation of sub-rule (1) above for sufficient reasons in exceptional circumstances.

(3) The provisions of sub-rule (1) shall not apply to servants referred to in clause (e) of section 577 of the Act upon their appointment under clause (f) of that section.

32 Confirmation.—A probationer shall be confirmed in his appointment at the end of the period of probation or extended period of probation if his work and conduct have been found satisfactory and his integrity is certified.

108 Ventilating grievances through the Press.—No servant shall ventilate through the press any personal or general grievance relating to matters concerning his service or the Mahapalika which he is serving.

109 Seeking employment elsewhere.—No servant shall apply for any post under any authority except by making an application through proper channel, nor shall any servant apply or enter into negotiations for his employment on any post not under any Government in the Indian Union except after obtaining through proper channel previous permission in writing from the State Government.

110. Criticism of Government or a Local Authority.—No servant shall, in any radio broadcast or in any document published anonymously or in his own name or in the name of any other person or in any communication to the Press or in any public utterance make any statement of fact or opinion—

- (i) which has the effect of any adverse criticism of any decision of his superior officers or of any current or recent policy or action of the Uttar Pradesh Government, the Government of India or the Government of any other State or a local authority ; or
- (ii) which is capable of embarrassing the relations between the Uttar Pradesh Government and Government of India or the Government of any other State or which is capable of embarrassing the relations between the Mahapalika and any other local authority ; or
- (iii) which is capable of embarrassing the relations between the Government of India and the Government of any foreign State :

Provided that nothing in this rule shall apply to any statement made or views expressed by a servant, in his official capacity or in the due performance of the duties assigned to him.

Illustrations

(1) A, a servant is dismissed from service by the appointing authority. It is not permissible for B, another servant to say publicly that the punishment is wrongful, excessive or unjustified.

(2) A public officer is transferred from station A to station B. No servant can join the agitation for the retention of the public officer at station A.

(3) A neighbouring State lays claim to a tract of land lying on the border of Uttar Pradesh. A servant cannot publicly express any opinion on the claim.

(4) If a foreign State terminates the concessions given by it to the national of another State, it is not permissible for a servant to publish any opinion on the decision.

(5) If the Government of India imposes duty at certain rates on specified imported goods, it is not permissible for a servant to express any opinion about the rate of such duty.

(6) It is not permissible for a servant to criticise publicly the policy of the Government of India or the Government on such matters as the fixation of price of sugar.

111. Public demonstrations in honour of servants.—No servant shall except with the previous sanction of the appointing authority, receive any complimentary or valedictory address or attend any meeting or public entertainment held in his honour or in the honour of any other servant :

Provided that nothing in this rule shall apply to a farewell entertainment of a substantially private or informal character and a honour of a servant on the occasions of his retirement or quitting service.

112. Vindication of facts and character of servants.—No servant shall, except with the previous sanction of the appointing authority, have recourse to the Press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of defamatory character.

Explanation.—Nothing in this rule shall be deemed to prohibit a servant from vindicating his private character or any act done by him in a private capacity.

113. Convassing of non-official or other outside influence.—No servant shall bring or attempt to bring whether himself personally or through a member of his family, and political or other outside influence to bear upon any question relating to his interest in respect of matters pertaining to his service.

Explanation.—Any Act done by the wife or husband, as the case may be, or any member of the family of a servant and falling within the purview of this rule shall be presumed to have been done at the instance, or with the connivance of the servant concerned, unless the contrary shall have been proved.

Illustration

A is a servant and B a member of the family of A ; C is a political party and D is an organisation under C, B gained sufficient prominence in C and became an office-bearer of D. Through D, B started sponsoring the cause of A to the extent that B sponsored some resolutions against A's official superiors. This action which will be in violation of the provisions of the above rule on the part of B shall be presumed to have been done by B at the instance, or with the connivance of A unless A is able to prove that this was not so.

114. Unauthorised pecuniary arrangements.—No servant shall enter into any pecuniary arrangement with another servant or any other person so as to afford any kind of advantage to either or both of them in any unauthorised manner or against the specific, or implied, provisions of any rule for the time being in force.

115. Bigamous marriages.—(1) No male servant who has a wife living, shall contract another marriage nor a female servant shall marry any person who has a wife living, notwithstanding that such subsequent marriage is permissible, under the personal law for the time being applicable to him :

Provided that the appointing authority may, if satisfied that there are special grounds for exempting any servant from the operation of this sub-rule,

refer the matter to the Executive Committee whose decision thereon shall be final.

(2) The minimum punishment to be imposed for contravention of sub-rule (1) shall be the withholding of increments for three years.

116. Proper use of amenities.—No servant shall misuse, or carelessly use, amenities provided for him by the Mahapalika to facilitate the discharge of his public duties.

117. Payment of purchases.—Unless payment by instalments is customary, or specially provided, or a credit account is maintained with a *bona fide* tradesman, no servant shall withhold prompt and full payment for the articles purchased by him.

118. Use of services without payment.—No servant shall, without making proper and adequate payment, avail himself of any service or entertainment for which hire or price or admission fee is charged.

119. Use of conveyance belonging to others.—No servant shall, except in exceptional circumstances, use a conveyance belonging to a private person or any servant who is subordinate to him, or a vehicle belonging to the Mahapalika or Government which he is not officially authorised to use for the performance of his duty.

120. Purchase through subordinate.—No servant shall himself ask or permit any member of his family to ask any person who is subordinate to him, to make purchases, locally or from outstation, on behalf of him or a member of his family living with him, whether on advance payment or otherwise :

Provided that this rule shall not apply to the purchases which the inferior staff attached to the servant may be required to make.

121. Registration, promotion and management of Companies.—No servant shall, except with the previous sanction of the Mukhya Nagar Adhikari, take part in the registration, promotion or management of any bank or other company registered under the Companies Act, 1956 or under any other law for the time being in force :

Provided that a servant may take part in the registration, promotion or management of a Co-operative Society registered under the Uttar Pradesh Co-operative Societies Act, 1965 (U. P. Act no. XI of 1966), or under any other law for the time being in force, or of a literary, Scientific or Charitable Society registered under the Societies Registration Act, 1860 (Act no. XXI of 1860), or under any corresponding law in force.

122. Guardianship of minors.—A servant may not, without the previous sanction of the Mukhya Nagar Adhikari, act as a legal guardian of the person or property of a minor other than his dependent.

Explanation.—A dependent for the purpose of this rule means a servant's wife, children and step-children and children's children and shall also include his parents, sisters, brothers, brother's children and sister's children if residing with him and wholly dependent on him.

123. Action in respect of a relation.—(1) Where a servant submits any proposal or opinion or takes any other action, whether for or against any individual related to him, whether the relationship be distant or near, he shall with every such proposal, opinion or action, expressly state whether

the individual is or is not related to him, and if so related the nature of the relationship.

(2) Where a servant has by any law, rule or order in force, power of deciding finally any proposal, opinion, or any other action and that proposal, opinion or action is in respect of an individual related to him, whether the relationship be distant or near and whether that proposal, opinion or action affects the individual favourably or otherwise, he shall not take a decision but shall submit the case to his superior officer after explaining the reasons and the nature of relationship :

Provided that this rule shall not apply to matters connected purely with academic activity, function or duty.

124. Interpretation.—If any question arises relating to the interpretation of rules 91—123 the Mukhya Nagar Adhikari shall refer it to the State Government whose decision thereon shall be final.

PART IX

Deputation of Servants

(Sections 109 and 113)

125. (1) A servant may, with his consent and subject to the previous sanction of the State Government, be sent by the Mahapalika on deputation to any other local body, recognised institution or Public undertaking.

(2) The period of deputation should normally be restricted to a maximum period of three years. Retention of the services of a particular servant beyond the period of three years should be subject to the approval of Government, be allowed in exceptional cases.

126. A servant, who is on leave other than a leave preparatory to retirement, may be allowed to be sent on deputation only after he has resumed his duties in the Mahapalika.

127. A servant sent on deputation shall be deemed to remain in the same service of the Mahapalika in which he was included in a substantive or officiating capacity immediately before his being sent on deputation and may be given such promotions in that service as the authority competent to order of promotion may decide. In giving promotion such authority shall take into account—

(a) the nature of the work performed while on deputation ; and

(b) the promotion given to juniors in the service in which the question of promotion arises.

128. A servant on deputation shall draw pay from the local body to which he is sent on deputation, with effect from the date he hands over charge on his post in the Mahapalika. The amount of his pay, the period of joining time admissible to him and his pay during such joining time will be fixed by the employing authority in consultation with the relieving authority.

129. When the deputation of a servant is sanctioned, the pay which he shall receive in the service to which he is sent on deputation, must be precisely specified in the order sanctioning the deputation. If it is intended that he shall receive any remuneration or enjoy any concession of pecuniary value in addition to pay and other allowance, payable to him by the Mahapalika, the exact nature of such remuneration or concession must be similarly

specified. No servant shall be permitted to receive any remuneration or enjoy any concession which is not so specified and if the order is silent on any particular remuneration or concession, it must be assumed that the intention is that it shall not be available.

130. The pay of a servant sent on deputation to a post, the duties of which are similar to those of the post held by him immediately before deputation, shall be fixed at a sum which does not exceed by more than twenty-five per cent. of the amount of his last substantive pay in the service of the Mahapalika or if he is officiating in a grade or post from which he is unlikely to revert, twenty-five per cent. of amount of his last pay drawn, but the special pay or personal pay shall not be taken into account in fixing his pay during the service on deputation.

131. A servant on deputation, whose pay is fixed under rule 130 may on the occasion of his substantive promotion in his parent service, or on accrual of periodical increments in that service, be granted an equivalent, increase plus a sum not exceeding twenty per cent. of that increase. He may be given, with the consent of the Mahapalika, such similar benefit on the occasion of each officiating promotion as he would have obtained in his parent service had he remained in that service.

132. In the absence of a specific mention to the contrary in the order sanctioning service on deputation, the pay to be drawn during joining time shall be that admissible in such service.

133. Specific terms in regard to travelling allowance to be allowed to the servants for joining any post on deputation and on reversion therefrom, shall invariably be prescribed by sanctioning authority in consultation and agreement with the local body, institution or Public Undertaking, to which the servant is sent on deputation.

134. A servant, who is sent on deputation shall if he has been subscribing to the Mahapalika Provident Fund or is eligible to do so, subscribe to the said fund as usual, according to the rate of his pay drawn while in service on deputation.

135. A servant sent on deputation may not, without the sanction of the Government accept a gratuity from the local body under which he is serving on deputation.

136. (1) A servant on deputation may be granted leave other than a leave preparatory to retirement and paid leave salary by his employing authority subject to the same conditions which would have regulated the grant of such leave had he been under the employment of the Mahapalika.

(2) The power to suspend, to institute disciplinary proceedings and to punish a servant sent on deputation shall continue to vest in the authority which had such power over that servant previous to that deputation.

137. A servant reverts from the service on deputation on the date he takes over charge of his post under the Mahapalika but if he takes leave on the conclusion of the service on deputation before joining his post, the date of his reversion will be fixed by the Mahapalika after taking into account the joining time which he takes at the end of his leave before actually taking charge of his post under the Mahapalika.

Illustration

If a servant, after service on deputation up to April 30, 1960 proceeds on leave on average pay for three months from May 1, 1960, and on the expiry

of leave rejoins the Mahapalika service on August 8, 1960 (forenoon) after availing seven days' joining time the date of his reversion shall be fixed on August 8, 1960 (forenoon).

138. When a servant reverts from the service on deputation to Mahapalika service his pay and contribution towards his Mahapalika Provident Fund shall cease to be paid by the local body under which he has been on deputation with effect from the date of reversion.

139. (1) The local body, or institution or Public Undertaking to which the servant is sent on deputation may, with the consent of the Mahapalika, the written consent of the servant and subject to approval of the State Government, absorb him in its permanent service and in that case the servant shall cease to hold a lien on his post in the said Mahapalika with effect from the date of his confirmation in such service.

(2) A servant on deputation may retire from service, or proceed on leave preparatory to retirement without actually reverting to the parent service subject to the sanction of the appointing authority in this regard

APPENDIX 'A'

[See Rule 5 (2)]

Form of Character Certificate

Certified that I have known Sri/Srimati/Kumari daughter of for the last years months and that to the best of my knowledge and belief he/she bears a reputable character and has no antecedents which render him/her unsuitable for employment in the service of the Mahapalika.

2. That Sri/Srimati/Kumari

is not related to me.

Place

Signature

Date

Designation

(Seal)

APPENDIX 'B'

(See Rule 9)

General Rules regarding Reservation for Scheduled Castes in Services

Consist with the maintenance of efficiency of administration—

- (i) the interest of the backward classes shall general be borne in mind in making appointments ; and
- (ii) there shall be a general reservation of 18 per cent of vacancies for members of the Scheduled Castes in making appointments to service and posts in connection with the affairs of the State of Uttar Pradesh.

Provided that if in any one year candidates of the Scheduled Castes fail to be recruited to any service or establishment to the extent of 18 per cent the deficiency shall be made good in the recruitment to the service or establishment concerned in the following year ;

Provided, further, that the reservation on account of the deficiency shall not be carried forward for more than two years.

APPENDIX 'C'

(See Rule 12)

Requisition form for the recruitment of candidates for appointment to the post (s) of
Nagar Mahapalika

1. (a) Designation of the post.

(b) Has the post been newly created ? If so, when was it created ?
 A copy of the order sanctioning the post should be furnished.

(c) Number of posts to be filled.

(d) If the post is not a new one, when and how did it fall vacant ?

(i) Has any one been appointed to the post ?

(ii) If so, since when has he been holding the post ?

(iii) Has the Commission's approval to his officiating appointment been obtained? If so, the number and date of Commission's letter may be quoted.

(iv) If no approval has been obtained, the circumstances in which the appointment could not be made with the prior approval of the Commission.

2. Whether permanent or temporary.

(if temporary, period for which it will last)

3. Whether pensionable, or non-pensionable.

4. Period of probation, if any.

5. Duties.

6. When will the selected candidates be required to join.

7. Scale of pay. Whether increased starting salary will be permissible? If so, to what extent.

8. Provident Fund Pension Fund.

9. Any special concession such as free quarters, light, water, etc.

10. Qualifications required :

(a) Essential (including such things as academic qualifications, training experience, etc.)

(b) Preferential qualifications, if any.

(c) Any other qualifications.

(d) Specify if relaxation is permissible in respect of the above qualifications.

(e) Will equivalent qualifications be accepted? (If so, equivalents should be stated).

11. Age-limits :

(a) Lower age-limit.

(b) Upper age-limit (specify if relaxation is permissible).

12. Nationality.

13. Are permanent servants of the Mahapalika eligible? If so, will any of the conditions be relaxed in their favour? The conditions to be so relaxed should be indicated.

14. Any other conditions or qualifications not covered by the above questions.

()
Signature of the Requisitioning Authority
Designation

(Seal)

Date :

APPENDIX 'D'

[See Rule 17 (1)]

Price Rs.

Serial No.

NAGAR MAHAPALIKA

APPLICATION FORM FOR APPOINTMENT

(To be filled up by the candidate in his/her own handwriting in accordance with the instructions.)

1. The designation of the post or service applied for.

2. Full name (written in BLOCK LETTERS).

3. Full postal address (Any change of address should be communicated at once to the addressee and candidates must make arrangements to see that communications addressed to them at the address given in their applications are redirected).

4. Name of the district of which you are a permanent resident.

5. Exact date of birth.

Proof furnished Encl. No.

6. Nationality.

7. Where were you born ? (State the town, district and State).

8. What is your father's (a) name.....
(or husband's*).

(b) place of birth,

(c) place of permanent residence.

9. What is (or was*) your father's (or husband's) occupation and where does (or did*) he carry on his occupation ? If he is (or was) a government servant or in a private employ, the exact designation of the post held and the place where he is (or was) stationed should be stated.

10. If your father (or husband*) is (or was) employed in any department of the Union Government—

(a) was he liable to inter-State transfer ?

(b) what is the period of your continuous residence in Uttar Pradesh

* Strike off the word not required. In columns 8 to 11, married women candidates should furnish particulars of their husband. Other should furnish particulars of their father.

preceding the date of this application? Give the name of the district where you have resided.

11. If Uttar Pradesh is not the original domicile of your father (or husband¹)—

(a) When did he or you acquire a domicile in Uttar Pradesh and in what district?

(b) for what period have you resided in Uttar Pradesh preceding the date of this application?

12. Give the name and address of the officer of the university, college or school from whom you attach certificate of character.

Proof furnished Encl. No.

13. Give the names, profession and present addresses (in full) of two referees who should be responsible person (not relations well acquainted with you in private life and unconnected with your school, college or university), and from whom you have obtained character certificates.

(1)

(2)

Proof furnished Encl. No.

14. Have you been a candidate for any post advertised previously by the Mahapalika? If so, give particulars and dates.

15. Give below particulars of all academic and training examinations passed and degrees obtained (if any) commencing with the High School or equivalent examinations. State also whether each examination was passed at the first attempt and, if not, after how many attempts?

| Examination or degree (strike off words not required and substitute the name of the examinations passed, if, necessary) | Class or Division | Subject taken | Year of passing the examination or obtaining degree or diploma and the number of attempts made | Particulars of any medals and prizes obtained for achieving academic distinction may be stated | Proof furnished ^a (Enclosure No.) |
|---|-------------------|---------------|--|--|--|
| | | | Year | Number of attempts | |

High School
Intermediate

1 Strike off the word not required. In columns 8 to 11 married women candidates should furnish particulars of their husband. Other should furnish particulars of their father.

2 All entries in these columns must be supported by duly attested copies of certificates, which should be tagged to the application form and numbered serially. The serial No. of such certificates should be entered in the column "Proof furnished".

B. A./B. Sc.

B. Com.

B. Sc. (Ag.)

M. A /M. Sc.

M. Com.

Other academic or technical qualifications, if any.

16. Give detail, if any, of (i) proficiency acquired in games, sports and athletics, and (ii) part taken in other extra curricular or social activities.

| (i) Details of proficiency in games and athletics. Particulars of prizes, medals, trophies should be mentioned. | (ii) Details of part taken in other extra curricular activities such as being a boy scout or a member of N. C. C. prefect, monitor or offices held in connexion with debating and other literary or scientific societies of school college or university. | Proof furnished* (Enclosure No.) |
|---|---|----------------------------------|
|---|---|----------------------------------|

(1) At School

(2) At College or University

(3) Afterwards

17. If you have been employed before, give particulars below of all the appointments held by you :

| Name of the post held or nature of employment | Name of employer | Date of joining | Date of leaving | Salary | Proof furnished* (Enclosure No.) |
|---|------------------|-----------------|-----------------|--------|----------------------------------|
|---|------------------|-----------------|-----------------|--------|----------------------------------|

18. If your time since leaving school is not fully accounted for by the replies given above account for the remainder here with dates.

Proof furnished* (Enclosure Nos.)

19. Name of relations, if any, in the Mahapalika service (1)
(2)

20. Have you ever taken part in national work? If so, give particulars here or on a separate sheet inserting a reference to that sheet here.

Proof furnished* (Enclosure Nos.)

* All entries in these columns must be supported by duly attested copies of certificates, which should be tagged to the application form and numbered serially. The serial No. of such certificates should be entered in the column "Proof furnished".

21. Have you ever been dismissed or removed from service? If so, give details.

22. Additional remarks—(Applicants may mention here any special qualification or experience befitting them for recruitment to the service which have not been given under the above heads. If the space is insufficient for the purpose, necessary particulars may be given on a separate sheet of paper which should be attached to this application.)

23. Declaration to be signed by the candidate,

Declaration

I hereby declare that the entries in this form are true to the best of my knowledge and belief and that the above is true and correct statement of my career and nothing has been concealed, and if any entry in this form is found to be false, I will be disqualified.

Date

Place

Signature

The endorsement below must be signed by the Head of the Institution or educational establishment, as the case may be, in the case of candidates already serving (whether in permanent or temporary capacity) in the Department of the

No.

Dated

Forwarded

(The applicant Sri/Srimati/Kumari holds the post of under me in a Temporary*/Permanent capacity.

Signature of the forwarding Officer

Designation

(Official Seal)

APPENDIX "E"

[See Rule 21 (i)]

The following examinations are recognised as equivalent to the High School Examination with or in Hindi of the U. P. Board of High School and Intermediate Education.

(i) The Adhikari or Shiromani Examination conducted by the Gurukul University, Vrindaban.

(ii) The Vidyadhikari or the Alankar Examination conducted by the Gurukul University, Kangri (Hardwar).

(iii) The Purwa Madhyama Examination conducted by the Government Sanskrit College, Varanasi or Varanaseya Sanskrit Vishwavidyalaya, Varanasi.

* In case the applicant is temporarily employed in this present, post, then it may also please be stated whether he holds any other permanent post or not.

(iv) The Visharad Examination with Hindi Literature of the Sahitya Ratna Examination with Hindi Literature conducted by the Hindi Sahitya Sammelan, Allahabad.

(v) The Kovid or the Advance Language (with Hindi) Examination conducted by the Department of Education of the State Government of Uttar Pradesh.

(vi) The Prabhakar Examination of Punjab University, Punjab.

(vii) The Indian School Certificate Examination/The Cambridge School Certificate Examination with Hindi (as the first Language).

(viii) The erstwhile Departmental Special Vernacular Examination in Hindi conducted by the Department of Education of the State Government, Uttar Pradesh.

(ix) The Vidya Vinodini (Matriculation) Examination from the year 1946 to May, 1964, conducted by the Prayag Mahila Vidyapith, Allahabad, provided the full examination has been passed together or in not more than two compartments within two years of each other.

(x) Old Khand Madhyama (first two years' course) and Special Examination in additional subjects conducted by the Varanaseya Sanskrit Vishwavidyalaya, Varanasi (formerly conducted by the Government Sanskrit College, Varanasi).

(xi) Visharad Examination conducted by the Kashi Vidyapitha, Varanasi.

APPENDIX "F"

[See note to rule 28 (1)]

The general criteria for judging the suitability of a servant for crossing the efficiency bar, which may be taken into account by the appointing authority are as follows for various classes of posts included in the service.

A. (i) In case of Heads of Institutions and servants (Teachers) with an initial salary of rupees two hundred and above per mensem.

That a servant has kept himself abreast of progressive educational thought and development; exercises that in his dealing with his subordinates or the colleagues and the public; has capacity to maintain discipline among and control over his students; has a thorough grip over his subject; has familiarised himself with the relevant educational and financial rules (*only in case of Heads of institutions) and his integrity is certified.

A. (ii) In case of servants (Teachers) with an initial salary of rupees one hundred or above but not exceeding rupees one hundred and ninety-nine per mensem.

That the servant has developed in his student a taste for his subject, exercises a healthy moral influence on the students; exercises tact in his dealing with his colleagues; is ready to lend a helping hand to his Head of the institution; has on average shown fair percentage of results of the subject for subjects taught by him; has given evidence of capacity to hold an in-

1 The certificate awarded by the office of the Prayag Mahila Vidyapith situated at 556 Daraganj, Allahabad and 105 Hewett Road, Allahabad will be accepted.

dependent charge ; has actively participated in Co-curricular activities and his integrity is certified.

A. (iii) In case of Heads and servants (Teachers) with an initial salary of rupees seventy or above but not exceeding rupees ninety-nine per mensem.

That he has taught efficiently and to the best of his ability and worked with diligence ; exercises a healthy and moral influence on the students ; is ready to lend a helping hand to the Head of the institution ; has actively participated in the Co-curricular activities and his integrity is certified.

A. (iv) In case of other servants—

That he has been working efficiently and to best of his ability ; has shown capacity for supervision and control, has shown tact in dealing with his colleagues, subordinates and the public and his integrity is certified.

APPENDIX "G"

[See Rule 54 (i)]

Application for undertaking private tuition by a servant

(To be submitted in triplicate)

| Name, qualifications and designation of the applicant | His pay | Classes and subjects taught by the applicant | Particulars of the private tuition | | | Time proposed to be devoted to the tuition daily | Monthly amount of remuneration | Details of private tuitions if any, already allowed during the School year | Headmaster/Principal's recommendations |
|---|---------|--|---|--------------------------------|--|--|--------------------------------|--|--|
| | | | Name of scholar and class and name of the school, if any in which he reads. | Subjects proposed to be taught | Periods with dates for which the tuition is to be undertaken | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |

Date and place

Signature of Applicant

Note :—One copy with the orders of the appointing authority to be placed in the personal file of the teacher. One copy with the orders of the appointing authority to be returned to the teacher and one to be kept in School/College record.

APPENDIX "H"

[See Rule 57 (2)]

List of servants in the Educational Service of the Mahapalika who will reach the age of retirement or who are on extension of service in the financial year

| Serial No. | Name | Designation | Salary | Age on 31st March next | | Date on which he reaches the age of retirement or the extension expires | Length of service on 31st March next | Recommendation of the immediate superior authority | Orders passed by the appointing authority |
|------------|------|-------------|--------|------------------------|--------|---|--------------------------------------|--|---|
| | | | | Year | Months | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |

APPENDIX "I"

[See Rule 79 (1)]

Form of character roll

1. Name
2. Father's name
3. Place of residence
4. Date of birth
5. Office
6. Educational qualifications

Statement of service

| Name of Mahapalika | Appointment | Pay | Date |
|--------------------|-------------|-----|------|
| 1 | 2 | 3 | 4 |

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Name of relations in the Mahapalika's employment

| Name | Relationship | Office or Department | Mahapalika |
|------|--------------|----------------------|------------|
|------|--------------|----------------------|------------|

Particulars of immovable property

| Particulars of property with estimated value | Date from which acquired |
|--|--------------------------|
|--|--------------------------|

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Remarks recorded by Superior Officers

| Notice of commendation or rewards | Notice of censure or punishment |
|-----------------------------------|---------------------------------|
|-----------------------------------|---------------------------------|

APPENDIX "J"

[See Rule 96 (3)]

FORM OF DECLARATION

(A)

(For those who do not own any immovable property)

I hereby declare that I have no immovable property. If I, hereafter, acquire any immovable property I will declare the fact in the quinquennial declaration for the period concerned.

Signature

Designation

Dated 19 .

(B)

(For those who own immovable property)

I hereby declare that I possess immovable property as under :

Land property

| Land held in— | | | Area in acers | Acquired or ancestral, if acquired, date of acquisi- tion | Annual revenue | Estimated value | Remarks |
|---------------|--------|---------|---------------------|---|-------------------|--------------------|---------|
| District | Tahsil | Village | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

House property

| Serial No. | House situated in— | | Number of the house | Acquired or ancestral if acquired, date of acquisi- tion | Whether used for residen- tial pur- pose or let out on him | Annual rent | Estimated value | Remarks |
|---------------|-----------------------------|----------|---------------------------|---|--|-------------|--------------------|---------|
| | Village, town or city | District | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |

If I acquire further immovable property in future I will declare the fact in the quinquennial declaration for the period concerned.

Signature

Designation

Dated 19 .

N. B.—The immovable property includes house or landed property held under a mortgage or lease.

Property held or managed by or on behalf of a servant's wife or other member of his family joint with, or living with or in any way/dependent on him is, for the purpose of the declaration, considered to be held or managed by the servant himself.

(C)

(For those who do not have any shares or investments)

I hereby declare that I do not own any shares or other investments. If I hereafter acquire any shares or make other investments. I will declare the fact in the quinquennial declaration for the period concerned.

Signature

Designation

Dated 19 .

(D)

(For those who own shares or have other investments)

I hereby declare that I possess shares and investments as under :

Shares

| Serial No. | Particulars | Date of acquisition | Value of each share | Number of shares held | Total value of shares | Remarks |
|------------|-------------|---------------------|---------------------|-----------------------|-----------------------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

Investments

| Serial No. | Particulars | Date of making investment | Value | Remarks |
|------------|-------------|---------------------------|-------|---------|
| 1 | 2 | 3 | 4 | 5 |

If I acquire further shares or make other investments I will declare the fact in the quinquennial declaration for the period concerned.

Signature

Designation

Dated 19 .

By order,
R. S. JOHRI,
Sachiv

UTTAR PRADESH SHASAN

NAGARPALIKA (KHA) VIBHAG

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification No. 3564-A (NI-27) XI-Kha-23-Corp-63, dated 1 November 20, 1969 :

N. 3564-A (NI-27)/XI-Kha-23-Corp-63.

November 20, 1969.

In exercise of the powers under sub-section (4) of Section 514 read with sub-section (2) of Section 540 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (U. P. Act No. II of 1959), the Governor is pleased to make the following Rules, after their previous publication under notification No. 3722-B (NI)/XI-C-23-Corp-63 dated March 20, 1968, as required by sub-section (2) of Section 510 of the said Adhiniyam :

Rules regarding manner for the sale of immovable property attached for the non-payment of Mahapalika dues.

1. **Proclamation of sale.**—When a warrant for attachment and sale of any immovable property has been issued under Section 512 and the attachment of that property has been made in accordance with the provisions of sub-sections (1) and (2) of Section 513 the Mukhya Nagar Adhikari shall cause a proclamation in Form A, of the integrated sale of such property to be made in Hindi in Devnagri script specifying the time and place of the sale together with any other particulars that may be deemed necessary ; and if the Mukhya Nagar Adhikari does not direct otherwise it shall also be published in local paper.

2. **Postponement of sale of attached property.**—The Mukhya Nagar Adhikari may for any sufficient reason which he shall put on record postpone the sale of property.

3. **Sale to be by public auction.**—The sale shall be held by public auction by an officer authorised in that behalf by the Mukhya Nagar Adhikari.

4. **Mahapalika servants prohibited from bidding.**—No member or a servant of the Mahapalika shall directly or indirectly bid for, acquire or attempt to acquire any interest in the property proclaimed for sale.

Notes.—"Servant" of the Mahapalika includes his family i.e.—

(i) the wife, child or step-child of such servant whether residing with him or not, and, in relation to a servant, who is a woman, the husband residing with her and dependent on her ; and

(ii) any other person related, whether by blood or by marriage to the servant or to such servant's wife or husband, and wholly dependent on the servant, but does not include a wife or husband legally separated from the servant, or a child or step-child who is no longer in any way, dependent upon him or her, or whose custody the servant has been deprived of by law.

5. Time of sale.—No sale shall take place until after the expiration of at least fifteen days from the latest date on which a copy of the proclamation shall have been affixed under rule 1 above.

6. Co-sharer's bid preferred.—When the property put up for sale is a share of an undivided immovable property and two or more persons of whom one is co-sharer, bid the same sum for it, the bid shall be deemed to be the bid of the co-sharer.

7. Purchaser to deposit 25 per cent of the bid—At all such sales the person who is declared to be the purchaser shall immediately deposit 25 per cent of the amount of the bid or expenses of recovery and sale which ever is greater and in default of such deposit the property shall be put forthwith for re-sale.

8. When the full amount is to be paid.—The balance of the purchase money shall be paid by the purchaser upto 4 p. m. on or before the seventh day from the date on which the sale of immovable property took place, or if it happens to be a recognised holiday, upto 4 p. m. of the next working day after such seventh day.

9 Defaulting purchaser forfeits deposit.—If the purchaser makes default in paying the balance money within the prescribed period his deposit shall, after the expenses of the sale have been defrayed therefrom, be forfeited to the Mahapalika and the property shall be re-sold. The defaulting purchaser shall forfeit all claims to the property or to any part of amount realised on re-sale.

10. When fresh proclamation necessary in case of postponed sales and re-sales.—Every postponed sale of immovable property and every re-sale of it on the purchaser's default in payment of balance of the purchase money shall be made after the issue of a fresh proclamation in the manner prescribed for original sales.

11. Liability of defaulting purchaser for loss on re-sale.—If the proceeds of the sale which is eventually made be less than the price bid of the defaulting purchaser, the difference together with all the expenses incurred in such re-sale shall be recoverable by the Mahapalika from such defaulter as arrears of Mahapalika taxes.

12. Setting aside the sale.—The Mukhya Nagar Adhikari may set aside the sale—

(1) on an application made within thirty days from the date of the sale, by a person interested in the property sold, to have the sale set aside on the ground of some material irregularity or errors of omission or fraud in the publication or conduct of the sale, or on the ground that the defaulter had no saleable interest in the said property ; or

(2) of his own accord for reasons to be recorded by him in writing :

Provided that no sale shall be set aside under sub-rule (1) to this rule on the ground of irregularity or mistake or fraud unless it is proved to the satisfaction of the Mukhya Nagar Adhikari that applicant has sustained substantial injury by reason thereof.

13. When a sale is set aside, the deposit or purchase money as the case may be, of the purchaser shall be refunded to him.

14. Confirmation of sale.—If the Mukhya Nagar Adhikari sees no valid ground for setting aside the sale, he shall make an order confirming the sale on the expiration of the time allowed for submitting an application on under sub-rule (1) of rule 12 or as seen thereafter as the inquiry necessitated by an application, such as referred to in rule 12 is completed.

15. Purchaser to be entered in Mahapalika records as owner.—When the sale of immovable property is confirmed by the Mukhya Nagar Adhikari, the name of the purchaser shall be entered in the Maba records as the owner in lieu of the defaulter.

16. Transfer of possession : Granting of Certificate and its Registration.—The purchaser shall be put into possession in accordance with the provisions made under sub-sections (5) and (7) of Section 514 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 and granted a certificate in Form B declaring him to be the purchaser of the property in question, which he shall get registered in the office of the Registrar of the district at his own expense.

FORM A

(See Rule I)

(Proclamation of sale of immovable property attached under Section 519 of the U. P. Nagar Mahapalika Adhiniyam, 1959).

Notice is hereby given that the attached immovable property specified in the schedule below will be sold by public auction. The sale will be held by commencing at O'clock on the at At the sale the public generally are invited to bid, either personally or by duly authorised agent.

No bid by or on behalf of defaulter will be accepted nor will any sale to them be valid without express permission of the Mukhya Nagar Adhikari previously given. To following are the further :

Conditions of sale

(1) The particulars specified in the schedule below have been stated to the best information of the Mahapalika but the Mahapalika will not be answerable for any error, mis-statement or omissions in this proclamation.

(2) The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the property shall atonce be again put up auction.

(3) The highest bidder shall be declared to be purchaser of the property, provided always that he is qualified to bid, and provided that it shall be in the discretion of the Mukhya Nagar Adhikari or officer holding the sale to decline acceptant of the highest bid when the price offered appears so clearly inadequate, as to make it advisable to do so.

Dated this day of 19 ..

Signature of Mukhya Nagar Adhikari

Schedule

(Here state particulars of immovable property to be sold)

FORM B

(See Rule 16)

(Certificate of sale of attached immovable property)

This is to certify that Sri has been declared the purchaser at a sale by public auction on the day of 19 of and that the sale has been duly confirmed by the Mukhya Nagar Adhikari.

Signature of Mukhya Nagar Adhikari.

By order,

C. M. NIGAM,

Sachiv.

No. dated 21st April, 1970.

Copy forwarded to for information and necessary action.

Sahayak Nagar Adhikari (2)

U. P. NAGAR MAHAPALIKA SERVICES (DESIGNATIONS, SCALES OF PAY, QUALIFICATIONS, CONVEYANCE ALLOWANCES AND METHOD OF RECRUITMENT) ORDER, 1963.

(Published in Notification No. 16-Ma/XI-6-28 Corp. 1962, dated 1st March, 1963 in U. P. Gazette Extraordinary, dated 15th July, 1963.)

1. This order may be called the Uttar Pradesh Nagar Mahapalika (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment Order, 1963.

2. **Definitions.**—In this Order unless there is anything repugnant in the subject or context—

- (i) "Act" means the U. P. Nagar Mahapalika Adhiniyam, 1959 (U. P. Act II of 1959) ;
- (ii) "Appointing Authority" means any of the authorities empowered under Section 107 to appoint servants of Mahapalika ;
- (iii) "Commission" means the Uttar Pradesh Public Service Commission or the Uttar Pradesh Lokh Sewa Ayog ;
- (iv) "Executive Committee" means an Executive Committee constituted under Section 51 of the Act ;
- (v) "Government" means the Government of Uttar Pradesh ;
- (vi) "Mahapalika" means a Mahapalika established under Section 4 of the Act ;
- (vii) "Schedule" means the schedule appended to this Order ;
- (viii) "Section" means a section of the Act.

3. **Group of services.**—The servants of the Mahapalika shall be grouped into the services mentioned in the schedule namely :—

- (1) Administrative services ;
- (2) Revenue services ;
- (3) Public Health, Medical and Veterinary services to be called :—
 - (i) Public Health service ;

- (ii) Medical Service, and
- (iii) Veterinary Service.
- (4) Public Works Service ;
- (5) Water Works and Mechanical Engineering Service ;
- (6) Arboriculture Service ;
- (7) Audit Service ;
- (8) Accounts Service ;
- (9) Ministerial Service ;
- (10) Interior Service ;
- (11) Miscellaneous Service.

4. Designations of posts and scales of pay.—(1) The designations of the various posts that may be created by a Mahapalika under Section 106 and their scales of including special pays, shall be such as are given in the schedule :

Provided that a Mahapalika may, in case it is able to bear the additional expenditure from its own funds, enhance by Rs. 2/- per month the pay scale of all its servants whose pay scales range between Rs. 8/- and Rs. 30/- per month, including special pay, if any.

(2) Dearness allowance and other allowances, if any, shall be payable to the incumbents of the posts specified in the schedule at such rates and on such conditions as are determined in this behalf from time to time, by the Government.

5. Limitation on the creation of posts.—(1) (a) No posts other than the posts mentioned in the schedule shall be created by a Mahapalika under clause (vi) of sub-section (1) of Section 106, except with the prior sanction of the State Government and on such terms and conditions as the State Government may specify in this behalf.

(b) Without prejudice to any thing contained in sub-para (2) the number of such posts as the Mahapalika creates under clause (vi) of sub-section (1) of Section 106 shall not, except with the prior sanction of the State Government, exceed their number as existed on January 31, 1960.

(c) The Mahapalika shall not combine any existing post except with the prior sanction of the State Government.

(d) Where a Mahapalika has already created posts in excess of the permanent posts which existed January 31, 1960 the post which are in excess shall not be filled up, or of substantive appointment thereto have already been made, they shall not be filled up on the occurrence of future vacancies, without prior approval of the State Government.

(2) Except with the prior approval of the State Government a Mahapalika shall not create more than—

- (a) two posts of Upa Nagar Adhikari ;
- (b) three posts of Nagar Abhiyanta, including Nagar Abhiyanta (Jalkal) ;
- (c) three posts of Sahayak Nagar Adhikari ;

(d) one post of Nagar Swasthya Adhikari ;

(e) one post of Mukhya Nagar Lekha Parikshak ; and

(f) one each such post as is provided in the Schedule for Kanpur only.

6 Establishment statement.—(1) As soon as may be possible after the publication of this Order the Mukhya Nagar Adhikari shall prepare a statement specifying the posts to be created under each service, their designations and scales of pay and shall also indicate the salaries and allowances, if any, to be paid to their incumbents.

(2) The statement prepared under sub-para (1) shall be placed before the Executive Committee. The Executive Committee shall consider the statement and lay it before the Mahapalika with such recommendations as it may like to make.

(3) The Mahapalika may sanction the statement as laid before it under sub-para (2) with or without modifications.

(4) Whenever it is proposed to create any new post/posts after the approval of the statement by the Mahapalika under sub-section (3) a similar statement in respect of such post/posts shall invariably be prepared and placed before the Executive Committee and the Mahapalika.

7 Qualifications —The qualifications for recruitment to various posts in the Mahapalika shall be such as are given in the Schedule.

8 Exemption from educational qualifications.—No person shall be appointed to any of the posts created under Section 106 unless he fulfils the qualifications and experience mentioned in the schedule against that post.

Provided that exemption may be granted in special cases by the appointing authority—

(i) in case of appointment to be made in consultation with the Public Service Commission, with the concurrence of the Commission ;

(ii) in case of other posts, with the approval of the Commissioner of the Division

Provided further that where such an exemption has been granted, the person so exempted shall not be appointed to another post requiring similar or higher qualification unless exemption is obtained in the manner laid down in the first proviso.

9 Method of recruitment.—The method of recruitment for each class of posts in a service shall be as given against it in the last column of the Schedule.

Provided that in case suitable candidates are not available for the posts to be filled up by promotion, the posts may be filled up by direct recruitment.

10. Conveyance allowance.—(1) Conveyance allowance shall be admissible to the incumbents of the posts specified in the Schedule for such conveyances and at such rates as are mentioned against them ;

Provided that "Tonga" and any other "conveyance" for which allowance was admissible on September 30, 1966, shall be deemed to have ceased to be regarded as authorised means of conveyance with effect from October 1, 1966. However, if any employee was getting any of these allowances on September 30, 1966, he would be allowed to draw the same at the rates admissible from time to time till he continues to maintain the conveyance in question during his incumbency of the post. No employee, who was not maintaining such means of conveyance on September 30, 1966 or any person who entered service on or after October 1, 1966 will be entitled to draw any allowance for the same.

(2) Conveyance allowance shall be payable only when the conveyance is actually maintained and is in working order and a certificate countersigned by the Head of the Department concerned is furnished every month by the servance concerned ;

Provided that the appointing authority may, in special cases sanction compensatory conveyance allowance for a short period, not exceeding six months for using hired conveyance where an employee does not maintain a conveyance because of his being appointed on probation for a short period or for other similar reasons considered sufficient by the appointing authority, or where an employee maintains a conveyance but the same is not actually used for its being under repairs or for some other reasons considered sufficient by the appointing authority. The rate of such allowance shall in every case, except bicycle, be 5 less than the amount of allowance fixed for the type of conveyance.

Provided also that if in any exceptional case it appears to the State Government that payment of a conveyance allowance to the incumbent of any other post is justified having regard to the nature of duties to be performed by him and the amount of touring involved therein, the State Government may sanction suitable allowance to the said servant and the payment of such allowance shall be subject to the same terms and conditions as mentioned in the paragraphs above.]

N B.—The Uttar Pradesh Nagar Mahapalika (Designations, Scales of Pay, Qualifications, Conveyance Allowances and Method of Recruitment) Order, 1963, published with Notification No. 16-Ma/X-C.28-Corp.-62, dated March 1, 1968 was amended by the following notifications :

- (1) Notification No. 66-Ma (San. 1)/XI C-2 Corp. 62, dated May 15, 1963.
- (2) Notification No. 82-Ma (San. 2)/XI-C-2 Corp. 62, dated August 8, 1963.
- (3) Notification No. 206-Ma/XI C-28 Corp. 62, dated March 31, 1964.

1. Subs. by Noti. No. 239-A/XI-B 5-Corp.-67, dated July 31, 1970, published in U. P. Gazette, part 1-Ka, dated 22nd August, 1970, pp. 2679-2680.

- (4) Notification No. 57-Ma/XI/C-26 Corp. 65, dated December 18, 1965.
 - (5) Notification No. 2264-B/XI C-28 Corp. 62, dated August 10, 1966.
 - (6) Notification No. 362-B/XI-C-28 Corp. 62, dated November 15, 1966.
 - (7) Notification No. 590-B/XI-C-5 Corp. 67, dated May 18, 1967.
 - (8) Notification No. 777-Ma/XI-C-28 Corp. 62, dated February 21, 1968.
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